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OFFICE OF THE CLERK

In The
Supreme Court Of The United States

OCTOBER TERM, 1991

JOHN R. PATTERSON, TRUSTEE,

Petitioner,

v.

JOSEPH B. SHUMATE, JR.,

Respondent.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

JOINT APPENDIX - VOLUME I

G. Steven Agee
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& AGEE, P.C.
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Counsel for Respondent

PETITION FOR CERTIORARI FILED
NOVEMBER 8, 1991

CERTIORARI GRANTED JANUARY 21, 1992

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The following decision, opinions, and order have been omitted in printing this Joint Appendix because they appear on the following pages in the appendix to the printed Petition for Certiorari:

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RELEVANT DOCKET ENTRIES

**United States District Court for the
Western District of Virginia (86-0272-R)**

- 2/27/87 Memorandum Opinion and Order confirming the Coleman Furniture Corporation Pension Plan, as amended and restated.
- 7/27/87 Motion to Compel Performance of Duty by Shumate.
- 7/27/87 Notice of Hearing by Shumate.
- 8/11/87 Answer to Motion to Compel Performance by Trustee.
- 8/12/87 Motion to Intervene by John R. Patterson, Trustee
- 8/20/87 Objection to Motion to Intervene by Shumate.
- 8/24/87 Order entered ordering that John R. Patterson, Trustee may intervene in this civil action and file such pleadings and take such other actions as he deems appropriate to protect his interests.
- 8/20/87 Responsive Pleading of John R. Patterson, Trustee.
- 8/20/87 Motion for Pre-Trial Conference by John R. Patterson, Trustee.
- 8/20/87 Motion to Withdraw Reference and Consolidate Cases by Patterson.

8/27/87 Order entered making John R. Patterson, Trustee a party to this suit.

9/16/87 Motion for Additional Facts to be Stipulated as Issues for Motion to Compel by Shumate.

9/15/87 Transcript of Stipulation of Fact Before the Honorable Glen M. Williams by Bridget Dickert.

9/21/87 Statutes and Cases Supporting Motion to Compel Performance of Duty by Shumate.

9/21/87 Brief of John R. Patterson, Trustee in Bankruptcy for Shumate.

9/21/87 Stipulations of Fact by Patterson.

9/21/87 Objection to Motion for Additional Facts by Patterson.

9/28/87 Response Objections to Stipulations of Fact by Shumate.

9/28/87 Reply Brief of Shumate.

10/08/87 Requests for Production of Documents by Patterson.

10/08/87 Requests for Admissions by Patterson.

10/08/87 Interrogatories by Patterson.

10/13/87 Petition by Trustee and Shumate.

10/13/87 Request for Admissions by Trustee.

11/09/87 Objection to Request for Admissions by Shumate.

11/09/87 Response to Request for Admission by Shumate.

11/09/87 Response to Request for Production of Documents by Shumate.

11/09/87 Response to Interrogatories by Shumate.

11/13/87 Motion for Hearing by Patterson.

11/13/87 Notice of Hearing by Patterson.

11/13/87 Requests for Admissions by Patterson.

11/13/87 Interrogatories by Patterson.

11/17/87 Notice of Hearing by Creasy.

12/04/87 Order entered authorizing Creasy to direct the payment of \$250,000.00 to be deposited with the Clerk's Registry Fund; ratifying, approving, and incorporating into this Order the Agreement between Creasy, Shumate, Patterson and the Plan; dismissing Creasy as a party defendant in the Adversary Proceeding; continuing this case.

12/16/87 Response of Interrogatories of

Patterson by Shumate.

12/16/87 Objections and Reponse to Request for Admissions and Answers to Request for Admissions by Shumate.

12/16/87 Court Hearing: Honorable Glen M. Williams presiding; Bridget Dickert OCR. Parties present by counsel for hearing on evidence in regard to Shumate's claim for pension benefits. Evidence presented. Argument presented.

3/01/88 Memorandum Opinion and Order denying Motion to Compel the firm's Chapter 7 trustee to pay Shumate his interest in the Coleman Furniture Corporation Pension Plan.

3/08/88 Motion to Reconsider and Amend Order by Shumate.

3/21/88 Memorandum in Opposition to Shumate's Motion to Reconsider.

4/14/88 Memorandum Opinion and Order granting Shumate's Motion to Reconsider and that the proceedings in this matter are stayed pending appeal.

4/22/88 Leave to Proceed on Appeal In Forma Pauperis from the District Court to the Court of Appeals.

4/27/88 Order granting In Forma Pauperis for appeal purposes.

6/6/88 Judgment of the 4th Circuit denying Petition for permission to appeal the interlocutory order.

6/29/88 Motion for New Trial by Shumate.

7/08/88 Answer to Motion for New Trial by Patterson.

8/15/88 Motion for an Order of Disbursement and Final Order by Patterson.

8/15/88 Notice of Hearing by Patterson.

8/22/88 Objection to Motion for Final Order and Motion for Relief from Interlocutory Order by Shumate.

9/02/88 Final order entered ordering the Clerk to pay over to Patterson funds held by the Court; withdrawing the reference to B/K AP#7-87-0133 and consolidating such AP into this civil action; dismissing Shumate and Patterson as parties to this civil action; ordering that this order is final regarding Shumate's interest in Coleman Furniture Corporation Pension Plan and regarding any and all claims by Shumate and/or Patterson against Creasy as Coleman Furniture Corporation Plan Administrator and Coleman Furniture Corporation Trustee in Bankruptcy.

9/08/88 Shumate's Exhibit from 9/1/88

hearing.

9/08/88 Request for Leave to Proceed on Appeal in Forma Pauperis From the District Court to the Court of Appeals with Affidavit in Support of Motion by Shumate.

9/08/88 Motion to Stay Order by Shumate.

9/08/88 Notice of Appeal by Shumate.

9/15/88 Order granting a stay of the judgment of this Court without posting any supersedeas bond.

9/20/88 Bankruptcy File received pursuant to this Court's Order of 9/2/88 withdrawing reference of AP#7-87-0133.

9/22/88 Appeal Record in 5 Volumes (Vol. V contains Exhibits for 12/16/87) forwarded to 4th Circuit.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

IN RE:)	
)	
JOSEPH B. SHUMATE, JR.	)	FILED
	)	JUL 27 1987
Plaintiff	)	Joyce F. Witt,
	)	Clerk
	)	By /s/ R. Collins
v.	)	Deputy Clerk
)	
	)	Civil Action No.
	)	86-0272-R
ROY V. CREASY, TRUSTEE)	
and PLAN ADMINISTRATOR)	
of COLEMAN FURNITURE)	
PENSION PLAN)	

MOTION TO COMPEL PERFORMANCE OF DUTY

COMES NOW, Joseph B. Shumate, Jr., and request this honorable Court compel Roy V. Creasy, Trustee and Plan Administrator of Coleman Furniture Corporation Pension Plan to stop interfering with Shumate's rights protected under the Employee Retirement Income Security Act pursuant to 29 U.S.C., Section 1001 et. seq. and pay over to Shumate his rightful pension pursuant to

this Court's order dated February 27, 1987 confirming the Coleman Pension Plan as amended and restated December 1, 1984, and states reason for this request as follows:

1. The District Courts of the United States has exclusive jurisdiction in this matter pursuant to 29 U.S.C., Section 1132.

2. This Court approved Creasy's amendments to the Coleman Pension Plan on February 27, 1987.

3. Shumate was determined to be a participant in the Coleman Pension Plan.

4. The Trustee in the process of terminating the plan paid benefits to all participants in the plan that he could locate except Shumate on or by July 1, 1987.

5. Creasy has discriminated and interfered against Shumate denying him

the right to receive the pension which he is entitled to under the plan pursuant to 29 U.S.C., Section 1140.

6. Creasy has violated his fiduciary duties by refusing to pay over to Shumate his portin of the pension pursuant to 29 U.S.C., Section 1104.

7. Creasy has violated this court's order of February 27, 1987 by refusing to administer the plan according to the plan as amended and restated December 1, 1984.

8. Creasy has coercively interfered with Shumate's rights to receive a pension under the plan pursuant to 29 U.S.C., Section 1141.

Therefore, Shumate request this court order that Creasy pay over to Shumate his rightful pension, plus interest, legal fees and expenses and any other equitable relief this court deems appropriate.

Shumate also request this court find Creasy to be in contempt of this order of February 27, 1987 and penalize Creasy within the confines of 29 U.S.C., Section 1141.

JOSEPH B. SHUMATE, JR.
/s/ Joseph B. Shumate, Jr.
 Joseph B. Shumate, Jr.
 1217 Memorial Dr.
 Pulaski, Va. 24301
 (703) 980-5030

(Certificate of Service Omitted in Printing)

UNITED STATES DISTRICT COURT
 FOR THE WESTERN DISTRICT OF VIRGINIA
 (Roanoke Division)

ROY V. CREASY, Trustee	)	FILED
	)	Aug 11 1987
Plaintiff	)	Joyce F. Witt,
	)	Clerk
	)	By /s/ R. Collins
v.	)	Deputy Clerk
)	
	)	RESPONSIVE
	)	PLEADING
COLEMAN FURNITURE)	
CORPORATION PENSION PLAN	)	Civil Action No.
	)	86-0272-R
Defendant)	

ANSWER TO MOTION TO COMPEL PERFORMANCE

COMES NOW, ROY V. CREASY, Trustee in Bankruptcy for Coleman Furniture Corporation and Plan Administrator of the Coleman Furniture Corporation Pension Plan ("Creasy"), by counsel, and for his Answer to the Motion to Compel Performance of Duty by Joseph B. Shumate, Jr. ("Shumate") states:

(1) Creasy admits that this Court has jurisdiction in this matter.

(2) Creasy admits the allegations contained in paragraphs 2 and 3 of the Motion.

(3) Creasy admits that he is in the process of terminating the Coleman Furniture Corporation Pension Plan (the "Plan"), and Signet Trust Company, at Creasy's direction, paid termination benefits in lump sum payments to most participants in the Plan that could be located on or about July 1, 1987, and Creasy has arranged for the purchase of annuity contracts for all of the other participants in the Plan except for Shumate.

(4) Creasy denies the allegations contained in paragraphs 5, 6, 7, and 8 of the Motion.

(5) All allegations in the Motion not specifically admitted are denied.

(6) Coleman Furniture Corporation

("Coleman") adopted the Plan effective December 1, 1963 and subsequently amended it several times including a restatement effective December 1, 1976. This 1976 version of the Plan is referred to for convenience in this pleading as the "Plan", and a copy of it has been previously been filed as an exhibit in this case. The Plan was in effect when Coleman filed its Petition under Chapter 11 of the Bankruptcy Code (11 U.S.C. § 1100 et seq.) in November, 1982.

(7) Coleman's bankruptcy case was converted to a case under Chapter 7 of the Bankruptcy Code in May, 1984, and Roy V. Creasy was duly appointed Trustee in Bankruptcy for Coleman.

(8) Creasy was appointed Plan Administrator of the Plan by order of this Court entered May 13, 1986.

(9) Creasy adopted a restatement of

the Plan (the "Restatement") including certain amendments required for continued qualification of the Plan for favorable income tax benefits and to facilitate termination of the Plan and distribution of Plan assets pursuant to an order of this Court entered February 27, 1987. A copy of the Restatement has previously been filed as an exhibit in this case. Except for those sections of the Restatement listed in the second paragraph of the Introduction of the Restatement, the Plan rather than the Restatement applies to Shumate.

(10) Shumate was hired, for purposes of the Plan, by Coleman on September 5, 1951, and his employment continued, except for a leave of absence because of military service, until it was terminated on February 24, 1983. At the time of his termination and for some period prior to termination, Shumate was president of

Coleman and received the highest compensation of any participant in the Plan.

(11) Shumate has thirty years or more of Benefit Accrual service under the terms of the Plan.

(12) Section 8.1 of the Plan provides (as required by ERISA and the Internal Revenue Code) that the normal form of normal retirement benefit under the Plan for an unmarried participant such as Shumate is a life annuity beginning at age 65.

(13) The actuary, Mercer-Meidinger-Hansen, has determined that Shumate is entitled to a normal retirement benefit from the Plan in the form of a monthly pension beginning at age 65 in the amount of \$3,540.48, and that the present value (or lump sum value) of this accrued benefit as of July 1, 1987, is \$200,948.44.

(14) Section 9.02 of the Restatement states the rights and obligations of the participants in the Plan and the plan administrator in the event of termination of the Plan. It provides in part as follows:

Subject to the restrictions of ERISA, as it may be amended, when the calculations [of the participants' benefits by the actuary] shall be completed, ... at the direction of the Plan Administrator, the appropriate portion of the Fund shall be liquidated and each of their [the Participants] interests distributed to them in the form of annuity contracts, annuity payments, installments or in a lump sum as determined by the Plan Administrator ...

This provision supersedes §14.3(d) of the Plan, and the primary difference is that the Restatement permits Creasy to direct payment of a participant's termination benefits in a lump sum if that ERISA permits a lump sum payment and Creasy determines that a lump sum payment will facilitate termination of the Plan.

(15) Creasy is required by ERISA to pay Shumate's benefits from the Plan in annuity form through the purchase from an insurer of a contract to provide the annuity, except that Creasy may honor "a participant's post-termination election of an optional annuity form payable under the plan ... or [purchase] an annuity which permits the participant or beneficiary to elect to receive his or her benefits in a form that is provided by the plan..." 29 C.F.R. §2617.4 issued under Section 4041 of ERISA (29 U.S.C. §1341) by the Pension Benefit Guaranty Corporation ("PBGC") (a copy of which is attached as Exhibit A); see also Internal Revenue Code §§ 401(a)(11) and 417(e) and Treas. Reg. § 1.417(e)-1T.

(16) Article IX of the Plan provides for optional forms of benefit payments including other types of annuities.

Section 9.4 provides, in part, "Subject to the consent of the Company and the Trustee, a Participant may receive an Actuarial Equivalent of his pension in such other manner as he may elect, including a lump sum."

(17) Shumate filed his Petition under Chapter 11 of Title 11 of the U.S. Code on June 1, 1984, which case was later converted to a case under Chapter 7 of Title 11 of the U.S. Code, and John R. Patterson ("Patterson") was duly appointed trustee in bankruptcy for Shumate.

(18) By letter to Creasy dated October 29, 1986, a copy of which is attached as Exhibit B, Patterson claimed title to Shumate's benefits from the Plan.

(19) On April 24, 1987, Patterson filed a Turnover Complaint in the United States Bankruptcy Court for the Western District of Virginia asking that the Court

order Creasy to turn over to Patterson all money due to Shumate from the Plan.

(20) While Patterson has asserted a claim to Shumate's benefits under the Plan, Internal Revenue Code § 401(a)(13) provides that the trust holding the assets of the Plan will not be qualified for favorable income tax benefits unless the Plan provides that benefits may not be assigned or alienated. This requirement is satisfied by § 16.1 of the Plan.

(21) By letter to Creasy dated July 24, 1987, a copy of which is attached as Exhibit C, Patterson, as trustee in bankruptcy on behalf of Shumate, has attempted to elect to receive Shumate's benefits from the Plan in a lump sum.

(22) Creasy has not offered Shumate or Patterson the opportunity to elect a lump sum payment of Shumate's termination benefits from the Plan.

(23) Creasy is not required to offer a lump sum election to Shumate because §9.02 of the Restatement and §9.4 of the Plan as cited above permit but do not require Creasy to offer a lump sum to Shumate.

(24) Pursuant to §5.3 of the Plan Shumate may elect to receive early retirement benefits determined in accordance with §6.3 of the Plan in lieu of normal retirement benefits beginning after completing 30 years of Benefit Accrual Service "on an early retirement date which may be the first day of any subsequent month prior to his normal retirement date."

(25) By letter dated September 12, 1986, a copy of which is attached as Exhibit D-1, Shumate was offered the opportunity to elect to receive early retirement benefits. Copies of correspondence related to this election are

attached as Exhibits D-2, D-3, D-4, D-5, D-6, D-7, D-8.

(26) Section 303 of the Retirement Equity Act of 1984 provides that participants in qualified plans who meet certain conditions shall have the right to elect to be covered by the joint and survivor annuity requirements of the Retirement Equity Act. Shumate meets these conditions, and he has been offered the opportunity to make this election. Attached as Exhibit E is a copy of the notice of election form which was sent to Shumate on December 18, 1986. Shumate has not made an election, and the election period expires on his "annuity starting date" as defined in §417(f)(2) of the Internal Revenue Code. 26 U.S.C. §417(f)(2).

(27) As permitted by regulation of the PBGC (29 C.F.R. § 2617.4(c)(2)), the

actuary acting on behalf of Creasy has attempted to locate an insurance company that will issue an annuity contract that would permit Shumate to elect to receive his benefit in the optional forms provided by the Plan. Attached as Exhibit F is a copy of the specifications for Shumate's annuity contract prepared by the actuary for submission to insurance companies. The actuary has received a quote for a contract that would permit Shumate to elect to receive his benefit in annuity form provided by the Plan and also in a lump sum, if the election of a lump sum is made by November, 1988.

(28) The actuary estimates that the cost of an annuity contract providing Shumate with the required options at this time is approximately \$204,000.

(29) If the purchase of the annuity contract is delayed by this proceeding,

then the cost could increase, and the actuary estimates that the cost of an annuity contract for Shumate could be as much as \$300,000 if interest rates decline.

(30) Creasy does not know whether Patterson has the right to make the elections described in paragraphs 20, 24 and 26, above, on behalf of Shumate.

(31) Creasy does not know whether the benefits of Shumate should be distributed to Shumate or to Patterson nor does he know the form in which the benefits should be paid.

(32) Creasy claims no beneficial interest in Shumate's interest in the Plan but is a mere stakeholder.

(33) In order to terminate the Plan Creasy requested a determination from the Internal Revenue Service in January, 1986, that the termination of the Plan would not adversely affect its qualification for

Federal tax purposes. By letter dated April 7, 1987, a copy of which is attached as Exhibit G, Teddy R. Kern, district director of the IRS, notified Creasy that the proposed termination would not adversely affect the Plan's qualification for Federal tax purposes if the termination were executed in accordance with information submitted during the request process.

(34) One of the requirements of the IRS determination letter is that the Plan be amended to comply with changes in the law governing qualified plans that occur and apply to the Plan prior to the final distribution of Plan assets. See the reference to Notice 86-13 in the letter, Exhibit G. Creasy will be required to amend the Plan or lose the qualification for favorable tax benefits for the Plan and Shumate if the final distribution does not

occur before such changes in the law apply to the Plan, which date may be as early as December 1, 1987, the beginning of the next Plan year.

(35) While the position of the IRS is not known, Creasy is concerned that a delay in distributing Shumate's benefits in some form will jeopardize the validity of the determination letter. If so, then a new application for a determination letter may be required to avoid the loss of qualified status for the Plan.

(36) 29 U.S.C. § 1341 as in effect with respect to the Plan in December, 1985 required the Plan to receive a Notice of Sufficiency from the Pension Benefit Guaranty Corporation ("PBGC") before terminating the Plan and distributing the Plan assets. Upon application by Creasy, the PBGC issued a notice of sufficiency to the Plan dated March 20, 1987, a copy of

which is attached as Exhibit H.

(37) The notice of sufficiency issued by the PBGC requires Creasy as Plan Administrator "to complete the termination of the Plan in accordance with Subtitle C of Title 4 of ERISA" within ninety days. Pursuant to requests by Mr. Creasy the PBGC has extended the deadline for the distribution of Plan assets to participants until November 20, 1987. A copy of the request and acknowledgement of the extended deadline is attached as Exhibit I.

(38) While the position of the PBGC is not explicitly stated, it appears that the failure to distribute Plan benefits within the specified period would require a new application for PBGC approval which would be governed by a new procedure established by the Single-Employer Pension Plan Amendments Act of 1986 including the requirement of a 10% excise tax on all

amounts reverting to Creasy as Trustee in Bankruptcy for Coleman.

(39) If the assets of the Plan cannot be distributed before the end of the current Plan year, November 30, 1987, then Creasy will be required to file additional annual reports to the Department of Labor and to pay additional premiums to the PBGC, which will require additional time and expense to the detriment of the Coleman bankruptcy estate.

(40) Creasy could complete the distribution of Plan assets before November 30, 1987, if he is permitted to distribute Shumate's benefits, in a form in accordance with the terms of the Plan and federal law, by that date.

(41) No detriment or prejudice to the interests of either defendant will occur if Creasy is permitted to deposit with the Court an annuity contract providing

Shumate's benefits in accordance with the terms of the Plan and federal law or a lump sum sufficient to fund his benefits.

THEREFORE, Creasy prays that:

- A. Patterson be required to answer and plead or be permitted to intervene in this case;
- B. Shumate and Patterson be required to settle between themselves the rights to Shumate's benefits under the Plan, payable in a form that will not adversely affect Creasy or other participants in the Plan and that Creasy be discharged from liability;
- C. Creasy be permitted to deposit with the Court an annuity contract providing Shumate's benefits under the Plan in the annuity forms provided by the Plan, if such a contract is available before November 20, 1987;
- D. If an annuity contract acceptable

to the Court or the parties is not available before November 20, 1987, Creasy be permitted to deposit with the Court a lump sum in the amount of \$300,000 to be used for the purchase of an annuity contract or payment of a lump sum as determined by the Court with the amount in excess of that required to fund Shumate's benefits in either form to be paid to Creasy as Trustee in Bankruptcy for Coleman Furniture Corporation and not as Plan Administrator of the Plan after the issues before the Court are resolved so that Creasy may complete the termination of the Plan in accordance with the requirements of ERISA and the Pension Benefit Guaranty Corporation.

MOTION FOR AN ORDER UNDER RULE 11
OF THE RULES OF CIVIL PROCEDURE

(42) Shumate is a party to the

adversary proceeding in Bankruptcy Court referred to in paragraph 19 above, and he is aware that Creasy has not paid Shumate's benefits because of that suit.

(43) The allegations in paragraphs 5, 6, 7 and 8 of Shumate's Motion to Compel Performance and the request for Creasy to be held in contempt are not well grounded in fact and are not warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law and are interposed to harass and to cause unnecessary delay and needless increase in the cost of litigation.

THEREFORE, Creasy asks that Shumate be ordered to pay Creasy as trustee in bankruptcy for Coleman the amount of the reasonable expenses incurred because of these allegations and requests, including reasonable attorney's fees.

ROY V. CREASY, Trustee

By: /s/ Harry S. Rhodes
Of Counsel

Harry S. Rhodes, Esquire
BERSCH & RHODES, P.C.
Suite 640 Colonial Plaza
P.O. Box 1529
Roanoke, Virginia 24007
(703) 345-7336

Counsel for Plaintiff

(Certificate of Service Omitted In
Printing)

Exhibit A

[§ 15,447C]

§2617.4 Requirement for annuities.

(a) *General rule.* Except as provided in Paragraph (b) of this section, when a plan is closed out under Subpart C of this part, any benefit that is payable as an annuity under the provisions of the plan must be provided in annuity form either through the purchase from an insurer of a contract to provide the annuity or by the PBGC under Subpart D of this part.

(b) *Exceptions.* A benefit that is payable as an annuity under the provisions of a plan need not be provided in annuity form as required by Paragraph (a) of this section, if--

(1) The monthly amount of the benefit is less than the smallest monthly benefit amount normally provided by an insurer;

(2) The present value of the benefit,

determined in accordance with §2619.26 of this part, is \$1,750 or less; or

(3) The plan provides for an alternative form of distribution, and the plan administrator submits a written statement to the PBGC in which he or she certifies that--

(i) The participant elected, in writing, the alternative form of distribution;

(ii) The participant was informed, in writing, before he or she made the election, of the estimated amounts of the annuity and of the alternative form of distribution, with reference to any risks attendant to the alternative form; and

(iii) The participant was notified, in writing, before he or she made the election, that his or her election would not be given effect unless the plan should close out under a Notice of Sufficiency,

and that the PBGC does not guarantee the benefit payable in the alternative form.

(c) *Required form of annuity.* The annuity required by Paragraph (a) of this section must be purchased in the form that would be paid under the plan upon retirement, unless before the date of termination, the participant or beneficiary elected an optional form of annuity payable under the plan; if such an election was made, the annuity must be provided in the optional form elected. This paragraph shall not preclude the plan administrator from--

(1) Honoring a participant's post-termination election of an optional annuity form payable under the plan, if the value of the annuity in the optional form is no greater than the value of the annuity in the form to which the participant was entitled on the date of plan termination;

or

(2) Purchasing an annuity which permits the participant or beneficiary to elect to receive his or her benefit in a form that--

(i) Is provided by the plan; or

(ii) Provides for a series of periodic payments for the life of the participant or beneficiary, if the right of election does not increase the cost of the annuity.

[¶ 15,447D]

Exhibit B

JOHN R. PATTERSON
Attorney at Law
Dominion Bank Building
Roanoke, Virginia 24011

Suite 910 Area Code 703
 Telephone 342-5157

October 29, 1986

Roy V. Creasy, Esquire
WILSON, VOGEL, & CREASY
P. O. Box 2420
Roanoke, Virginia 24010

Re: Coleman Furniture Corporation

Dear Roy:

I understand that Harry Rhodes has now determined that Joe Shumate is entitled to \$167,325.00 from the Coleman Furniture Corporation Pension Plan. You are aware that I am Trustee in Bankruptcy for Joseph B. Shumate, Jr. and I, therefore, would appreciate it if you would write me a letter advising me that you will make no distribution of these funds to Mr. Shumate but will disburse them to me as his Trustee

in Bankruptcy as I claim title to those funds and certainly do not want them to be disbursed to Mr. Shumate and then have to pursue him to gain control of those funds.

Yours very truly,

John R. Patterson

JRP/mjm

Exhibit C

JOHN R. PATTERSON
Attorney at Law
Dominion Bank Building
Roanoke, Virginia 24011

Suite 910 Area Code 703
 Telephone 342-5157

July 24, 1987

Roy V. Creasy, Esquire
WILSON, VOGEL & CREASY
P. O. Box 2420
Roanoke, Virginia 24010

Re: Coleman Furniture Corporation
Pension Plan

Dear Roy:

On December 31, 1986, I wrote you a letter regarding your pending distribution of the assets of the Coleman Furniture Corporation Pension Plan. As Trustee in Bankruptcy for Joe B. Shumate, Jr., I deem myself to now be the Participant and I elect under the terms of the Pension Plan to receive the termination distribution in a lump sum.

Yours very truly,

/s/ John R. Patterson
John R. Patterson

JRP/mjm
COPY SENT TO: Joseph B. Shumate, Jr.
G. Steven Agee, Esquire

Exhibit D-1

LAW OFFICES
BERSCH & RHODES
A Professional Corporation
Suite 640, Colonial Plaza
P. O. Box 1529
Roanoke, Virginia 24007

Robert S. Bersch (703) 345-7336
Harry S. Rhodes
Alice D. Burlinson File No.

September 12, 1986

Joe B. Shumate, Jr.
1217 Memorial Drive
Pulaski, VA 24301

RE: Coleman Furniture Corporation
Pension Plan
Early Retirement Benefits

Dear Mr. Shumate:

We represent Mr. Roy V. Creasy, Trustee, the Plan Administrator of the Coleman Furniture Corporation Pension Plan. According to the records of the Plan, you are eligible for early retirement benefits from the Plan.

The enclosed notice includes information about the form and amount of your early retirement benefits. If you

choose not to receive your early retirement benefits, then you will receive normal retirement benefits at age 65. The actuarial values of your early and normal retirement benefits are the same, but the monthly payments of normal retirement benefits will be slightly higher because those payments will begin later.

You may choose to receive early retirement benefits by completing and returning the enclosed benefit election form. If you do not want your early retirement benefits, please sign the enclosed copy of this letter and mail it to me at the address shown on the letterhead.

Note that the signatures on the benefit election form must be witnessed by a notary public. This is very important.

Very truly yours,

BERSCH & RHODES, P.C.

Harry S. Rhodes

HSR/dp

cc: Mr. Roy V. Creasy, Trustee

I do not elect to receive early retirement benefits. I will receive normal retirement benefits when I attain age 65.

Participant

Exhibit D-2

LAW OFFICES
BERSCH & RHODES
A Professional Corporation
Suite 640, Colonial Plaza
P. O. Box 1529
Roanoke, Virginia 24007

Robert S. Bersch (703) 345-7336
Harry S. Rhodes
Alice D. Burlinson File No.

October 20, 1986

Joe B. Shumate, Jr.
1217 Memorial Drive
Pulaski, VA 24301

RE: Coleman Furniture Corporation
Pension Plan Early Retirement

Dear Participant:

On September 12, 1986, a package of materials was mailed to you concerning your eligibility for early retirement benefits for the Coleman Furniture Corporation Pension Plan. As of this date, we have not heard from you.

Although the period to choose the type of benefit you want runs for 90 days, we would encourage you to respond quickly so

that benefits may begin being paid to you.

If you choose not to receive early retirement benefits, but would prefer to wait until your normal retirement date, you may do so. We would appreciate your letting us know whether or not you choose to receive early retirement benefits.

Should you have any questions, please let us know.

Very truly yours,
BERSCH & RHODES, P.C.

Alice G. Burlinson

AGB/dg

cc: Roy V. Creasy, Trustee

Exhibit D-3

December 29, 1986

Ms. Alice G. Burlinson
Bersch & Rhodes
P. O. Box 1529
Roanoke, Va. 24007

Ref: Coleman Furn.
Pension Plan

Dear Ms. Burlinson:

In response to your letter of December 18, 1986, I shall appeal your decision on Paragraph 1 of your letter to the Pension Board Guaranty Corporation for the following reasons:

1. The Pension Committee approved my taking part of my salary in notes for the years 1981 and 1982.
2. The Board of Directors also approved my taking notes for part of my salary in years 1981 and 1982.
3. Such action was for the benefit

of the Corporation.

4. Such action was for the benefit of all employees of Coleman Furniture.

In reply to your paragraph 2, I shall take my early retirement as of June 1, 1984 using the straight life method with the understanding that these payments will be made directly to me.

Yours very truly,

/s/ Joseph B. Shumate, Jr.
Joseph B. Shumate, Jr.
1217 Memorial Dr.
Pulaski, Va. 24301

Exhibit D-4

85116

January 5, 1987

Mr. Joseph B. Shumate, Jr.
1217 Memorial Drive
Pulaski, VA 24301

Re: Coleman Furniture Corporation
Pension Plan

Dear Mr. Shumate:

In your letter to Ms. Burlinson of this firm dated December 29, 1986, you stated that you wish to take early retirement benefits if these payments would be made directly to you. Because Mr. Creasy has notice of your personal bankruptcy, he does not believe that it is proper to pay these benefits directly to you, but rather to your bankruptcy trustee or the court.

Unless we hear to the contrary from you, we understand that you do not elect to

receive early retirement benefits at this time because your early retirement benefits would not be paid directly to you.

Please contact me if you have any questions.

Very truly yours,

BERSCH & RHODES, P.C.

Harry S. Rhodes

HSR:a

cc: Roy V. Creasy, Trustee

Exhibit D-5

January 7, 1987

Mr. Roy V. Creasy
P. O. Box 2420
Roanoke, Va. 24010

Re: Coleman Furniture Corp.
Pension Plan
Case No. 86-0272-R

Dear Mr. Creasy:

This is in response to a letter dated December 31, 1986 addressed to you, copy to me, from Mr. Patterson pertaining to my pension from Coleman Furniture.

Mr. Patterson is estopped from taking possession of my pension by Statute. (11 U.S.C., section 522).

If you cannot comply with my directive dated December 29, 1986 to your agent, Bersch & Rhoades, please advise me of the Statute(s) you will rely upon to deny me this request.

I will not take early retirement until my

pension payments will be made directly to me.

Awaiting your response, I am.

Yours very truly,

/s/ Joseph B. Shumate, Jr.
Joseph B. Shumate, Jr.
1217 Memorial Dr.
Pulaski, Va. 24301

(703) 980-5030

cc: Honorable Glenn M. Williams, Judge
U.S. District for Western District
of Va.
P. O. Box 339
Abingdon, Va. 24210

Mr. John R. Patterson
Suite 910
Dominion Bank Bldg.
Roanoke, Va. 24011

Bersch & Rhoades
P. O. Box 1529
Roanoke, Va. 24007

Exhibit D-6

February 10, 1987

Mr. Roy V. Creasy
P. O. Box 2420
Roanoke, Va. 24010

Ref: Joseph B. Shumate, Jr.
Coleman Furniture Corp.
Pension Plan
Case No. 86-0272-R

Dear Mr. Creasy:

On January 7, 1987 I wrote to you pertaining to my personal pension I am entitled to from Coleman Furniture. As of this date I have not received a reply from you and request that you do so in the near future.

Awaiting your response, I am.

/s/ Joseph B. Shumate, Jr.
Joseph B. Shumate, Jr.
1217 Memorial Dr.
Pulaski, Va. 24301

(703) 980-5030

Exhibit D-7

February 18, 1987

85116

Mr. Joseph B. Shumate, Jr.
1217 Memorial Drive
Pulaski, VA 24301

Dear Mr. Shumate:

Mr. Creasy has asked that I respond to your letter of February 10, 1987 which refers to your letter of January 7, 1987.

You have inquired as to the statutory authority by which Mr. Creasy refuses to pay your benefits under the Coleman Furniture Corporation Pension Plan directly to you. In your letter of January 7, you stated Mr. Patterson is estopped from taking possession of your pension benefits based on 11 U.S.C. Section 522 which deals with exemptions. You further stated that you would not elect to receive early retirement until your payments would be made directly to you.

Mr. Creasy believes Section 542, dealing with turnover provisions, controls in this instance. Since Mr. Creasy is aware of your personal bankruptcy he intends to turn over your assets to Mr. Patterson when the benefits based on the plan termination are distributed. The issue of payment of pension plan benefits in the course of bankruptcy proceedings has been litigated extensively with varying decisions. As a result, Mr. Creasy feels unable to make the payments directly to you at this time.

Very truly yours,

BERSCH & RHODES, P.C.

Harry S. Rhodes

HSR/B/lj

cc: Roy V. Creasy, Trustee

Exhibit D-8

February 23, 1987

Ms. Alice G. Burlinson
Bersch & Rhodes
P. O. Box 1529
Roanoke, Va. 24007

Dear Ms. Burlinson:

In response to your letter of February 18, 1987, this is to advise that I did not propose to take my retirement until such time it can be paid to me directly. Until such time I am converted, dismissed, or this matter is adjudicated, I expect the Plan Administrator and/or Trustee of the Coleman Furniture Pension Fund to hold my funds and pay them out to no one.

I shall hold the person violating my directive responsible for any damages to me in this matter.

Yours very truly,

/s/ Joseph B. Shumate, Jr.
Joseph B. Shumate, Jr.

1217 Memorial Drive
Pulaski, Va. 24301

cc: Mr. Roy V. Creasy
P. O. Box 2420
Roanoke, Va. 24010

Exhibit E

QUALIFIED PRE-RETIREMENT
SURVIVOR ANNUITY ELECTION NOTICE

TO: Participants in the Coleman Furniture Corporation Pension Plan who:

- (a) Had at least one hour of service under the Plan on or after December 1, 1976,
- (b) Do not have an hour of service after August 22, 1984,
- (c) Had at least ten years of service and a vested interest in a benefit from the Plan, and
- (d) Were alive on August 23, 1984, and had not begun to receive retirement benefits on that date.

The qualified pre-retirement survivor annuity ("QPSA") rules of the Retirement Equity Act of 1986 ("REA") do not apply to you unless you choose to have them apply. This notice is intended to explain this

choice.

The QPSA rules found in Sections 103 and 203 of REA provide that if a vested participant dies prior to eligibility for payment of retirement benefits and is survived by his or her spouse, then the surviving spouse shall receive a "qualified pre-retirement survivor annuity." A qualified pre-retirement survivor annuity is monthly payments beginning when retirement benefits would have begun if the participant had survived.

The QPSA rules also provide that the participant's spouse must sign a written consent before the participant's benefit payments can be made in some form, such as a lump sum, other than a QPSA.

This notice cannot describe all of the details of the QPSA rules or their effect on you, if they were to apply to you. The following is a brief discussion in general

terms of the possible effects of your choice for or against QPSA coverage.

If you elect QPSA coverage and you are married at the time of your death, then your spouse will receive a QPSA beginning when you would have been eligible to receive early or normal retirement benefits. Also, once you elect QPSA coverage, if you are married, your spouse must agree if you want to receive your benefits in a lump sum, a life annuity or some other form of benefits other than a QPSA. Furthermore, the cost of the QPSA may reduce the amount of your monthly retirement benefits.

If you do not elect QPSA coverage and you die before you are eligible to receive your retirement benefits, your spouse will not receive anything from the Plan. Also, if you do not elect QPSA coverage, you will not be required to get your spouse's

consent to the payment of your benefits in a lump sum, life annuity or some other form of benefit other than a QPSA.

There are two other factors to consider. First, if the present value of your retirement benefits is less than \$3,500, the spousal consent rules will not apply, regardless of whether you do or do not elect QPSA coverage. Second, the amount of a lump sum benefit payable to you because of the termination of the Plan will not be affected by this election.

In most cases, you would be advised to elect QPSA coverage unless you wish to avoid obtaining spousal consent to the payment of your benefits. The reason is that the Pension Plan does not pay any benefit if you die before retirement age. If you elect QPSA coverage your spouse will receive benefits if you die before retirement age.

Please consider this election carefully.
 If you have any questions, please call
 Alice Burlinson or Harry Rhodes at (703)
 345-7336 during business hours, or write
 them at P.O. Box 1529, Roanoke, Virginia
 24007.

Please make your election by completing the
 bottom portion of this form and sending it
 to Harry S. Rhodes at the above address.
 If your election form is not received by
 January 22, 1987, you will be presumed to
 have elected not to be covered by the QPSA
 rules.

 Name (please print)

 Address

CHOOSE ONE;

() I elect to be covered by the qualified
 pre-retirement survivor annuity
 ("QPSA") rules.

() I elect not to be covered by the
 qualified pre-retirement survivor
 annuity ("QPSA") rules.

 Signature of Participant

 Date

Exhibit F

WILLIAM M. MERCER-MEIDINGER-HANSEN, INC.
 COLEMAN FURNITURE CORPORATION
ANNUITY BUYOUT SPECIFICATIONS

We are requesting non-participating single premium immediate and deferred annuity quotes based on the attached census data and specifications. These annuities are for Coleman Furniture Corporation terminating qualified defined benefit pension plan.

- O Premium Receipt Date: June 15, 1987
- O Contract Payment Commencement Date: July 1, 1987. This is the date your contract will become responsible for payments to retirees and beneficiaries.
- O Commissions: None
- O State of Issue: Virginia
- O Premium Tax State: Virginia
- O A copy of the plan document is available upon request.

- O Data Specifications: Hard copy information is enclosed. The data have been thoroughly edited and reviewed. Consequently, the data are highly reliable. While data error is possible, we do not envision any substantial corrections.
- O Deaths Before Payment Commencement Date: Your quote must allow for premium refund to the pension trust for deaths which occur among participants or beneficiaries before the Contract Payment Commencement Date, currently set at July 1, 1987. Note this means we wish the refund on all single life deferred and immediate annuities and the co-annuitant portion of a joint life annuity only to the contract's initial payment commencement date. We are not seeking a refund of premium feature for

annuitants who die after July 1, 1987.

- O Small Annuity Limits: If it is necessary to pay some small benefits less frequently than monthly still feel free to quote, but specify this in your response.
- O Deferred vs. Immediate Annuities: Please separate your quotes by immediate and deferred annuities. Indicate if you will be willing to accept the combined group or only one group or the other. If you can bid only on one group, and feel you can be competitive, feel free to do so.
- O Payor Function: The insurance company will provide all payor functions.

DEFERRED ANNUITY SPECIFICATIONS

The following minimum provisions must be included in the deferred annuity being requested. If you are exceeding these provisions for pricing convenience, please

indicate when you send your quote.

- O Normal Form of Annuity: Straight Life. All other forms are actuarially equivalent to the normal form.
- O Normal Retirement Date: First of the month coincident with or next following the participant's 65th birthday.
- O Early Retirement Eligibility: Early retirement is available to participants on the first of the month following completion of 30 or more years of service. The person for whom an annuity is requested, already has 30 years of service.
- O Early Retirement Benefit Reductions: The accrued benefit is reduced actuarially.
- O Delayed Retirement: The benefit at normal retirement is actuarially increased.

- O Disability Benefits: Your annuities will not provide any specific disability benefits.
- O Actuarial Equivalence: 1971 Group Annuity Mortality Table for males set back one year for participants and set back five years for contingent annuitants with interest as follows:
 - (a) for the lump sum option the lesser of 7½% or the applicable PBGC deferred interest rates in effect on the preceding December 1, prior to payment.
 - (b) for all other purposes, 6%.
- O Optional forms available under the deferred annuity are:
 - 1. A 50%, 75% and 100% Joint and Survivor annuity may be elected by the participant. In this option, the monthly benefit decreases only if the

- participant predeceases the beneficiary.
 - 2. A Period Certain and Life annuity for 10 years.
 - 3. Lump sum.
- Should the participant elect an optional annuity in which the designated beneficiary is not the participant's spouse, the present value of payments to the participant must be 50% or more of the total present value of total expected payments to the participant and his beneficiary.
- O Pre-retirement Death Benefit: Your contract must offer the REA pre-retirement death benefit.
 - O Proof of Age: Please specify in your quote any particular proof or age or other requirements necessary to implement your annuities.

- O Your premium quotes must include all expenses, benefits and taxes. That is, we want the bid to be all inclusive.
- O All quotes must be in accordance with these specifications. Any item your company cannot accommodate must be disclosed in writing before a binding acceptance is made by the client.

Exhibit G

Internal Revenue Service
District Director

Department of
the Treasury

31 Hopkins Plaza
Baltimore, MD 21201-0000

Employer Identification Number:
54-0176030

Date: April 7, 1987

File Folder
Number: 540000293

ROY V. CREASY, TRUSTEE
IN BANKRUPTCY
c/o HARRY S. RHODES
BERSCH & RHODES PC
P. O. BOX 1529
ROANOKE, VA 24007

Person to Contact:
Fred A. Handelman

Contact Telephone
Number:
(301)962-3492

Plan Name:
Coleman Furniture
Corporation
Pension Plan

Plan Number: 001

Dear Applicant:

We have considered the information you sent us and have determined that your termination of this plan does not adversely affect its qualification for Federal tax purposes. Please note that this is not a determination regarding the effect of other

Federal or local statutes.

The enclosed document describes the impact of Notice 86-13. Even though you have terminated this plan, we would like to remind you of certain filing obligations. The related tax-exempt trust, custodial account, or other payers who are responsible for making payments may be required to file information returns on Forms W-2P or 1099R, with Forms W-3 or 1096, respectively, for amounts paid or made available to any individual or beneficiary.

In addition, you must continue to file a Form 5500 series return annually until all plan assets are distributed. The last return required is the one filed for the year in which distribution is complete. Be sure to write 'Final Return' across the top of this return.

Proposed date of termination is July

19, 1984.

We have sent a copy of this letter to your representative as indicated in the Power of Attorney.

Your plan's qualified status will be adversely affected if plan assets are returned to you before the plan's liabilities to all plan participants are satisfied by the purchase of guaranteed annuity contracts, or making of cash distributions as soon as administratively feasible. When you receive these excess plan assets, you should notify the Service of the date(s) you receive such assets and the date(s) guaranteed annuity contracts were purchased, or the date(s) of the payment of the cash distributions for all participants.

The information on the enclosed addendum is an integral part of this determination. Please be sure to read and

keep it with this letter.

45 Letter 1132(DO/CG)

ROY V. CREASY TRUSTEE IN BANKRUPTCY

Please keep this letter in your permanent records. If you have any questions concerning this matter, please contact the person whose name and telephone number are shown above.

Sincerely yours,

/s/ Teddy R. Kern
Teddy R. Kern
District Director

Enclosures:
Publication 794
OPWBP 515

ROY V. CREASY TRUSTEE IN BANKRUPTCY

Information on the date and amount of the reversion and distributions, and a copy of the approval of the change in funding method (if applicable) should be forwarded to the attention of:

Reversion Coordinator
EP/EO Technical Staff

P. O. Box 13163
Baltimore, Md. 21203

This determination is subject to your adoption of the proposed amendments submitted in your or your representative's letter dated Nov. 11, 1987. The proposed amendments should be adopted on or before the date prescribed by the regulations under Code section 401(b).

Exhibit H

Pension Benefit Guaranty Corporation
2020 K Street, N.W.,
Washington, D.C. 20006-1806

Mar 20 1987

EIN/PN: 54-0176030-001

In reply refer to:
07764700

Name of Plan: Coleman
Furniture Corporation
Pension Plan

Mr. Roy V. Creasy
Trustee
Wilson, Vogel, Creasy & Hambrick
P. O. Box 2420
Roanoke, Virginia 24010-2420

Dear Mr. Creasy:

The Pension Benefit Guaranty Corporation (PBGC) received the information required to demonstrate sufficiency relating to the termination of the above-identified Plan. Based on this, the Corporation is issuing the enclosed Notice of Sufficiency in accordance with Section 4041(b) of the Employee Retirement Income Security Act of 1974 (ERISA). It is the plan

administrator's responsibility to allocate assets in accordance with Section 4044 of ERISA. A reasonable interest assumption must be used to value lump sums under 29 CFR Part 2619.26. The Notice of Sufficiency is not deemed an expression of opinion by the PBGC as to the reasonableness of any proposed valuation rates to be utilized in the allocation of assets under Section 4044 of ERISA, including lump sums.

Upon receipt of the Notice of Sufficiency, you have 90 days to complete the termination of the Plan in accordance with Subtitle C, Title IV of ERISA. Pursuant to the attached Regulation of Administrative Review of Agency Decisions, assets may not be distributed prior to 30 days from the date of this letter. As of the date of plan termination, if the plan provides for reversion to the employer of

any assets remaining after all plan benefits have been provided, PBGC expresses no opinion as to whether this provision is legally valid. However, if the Plan is contributory, the portion of residual assets attributable to employee contributions must be allocated to eligible participants as provided in PBGC's regulation of Allocation of Assets.

Please note that in order to remove your plan from the PBGC-1 Form and premium billing mailing list, Subpart C of 29 Part 2617, requires you to submit to PBGC within 60 days after the completion of the distribution of plan assets, a certified statement that the plan assets were allocated in accordance with Section 4044 of ERISA, and also include the following information:

- (1) For each participant or beneficiary to whom distribution was made--

- (a) Name;
 - (b) Address;
 - (c) Telephone number;
 - (d) Sex;
 - (e) Date of birth;
 - (f) Social security number;
 - (g) The amount of benefit provided and unless previously submitted, the basis for computing the amount;
 - (h) The cost of providing the benefit;
 - (i) The form in which the benefit was provided; and
 - (j) The date the assets were distributed.
- (2) The total cost of all benefits provided by method of distribution, the number of participants in each distribution category, and a reconciliation of any differences from

the proposed distribution information previously submitted.

- (3) If annuity contracts were purchased from an insurer, the name of the insurer and the policy number(s); and
- (4) The place or places where plan records will be held.

Sincerely,

/s/ Denese Thomas
 Denese Thomas
 Case Officer
 Case Processing Division 2/4
 (202) 778-8872

Enclosure

cc: Alice Burlinson

Pension Benefit Guaranty Corporation
 2020 K Street, N.W.,
 Washington, D.C. 20006-1806

Date Mar 20 1987

NOTICE OF SUFFICIENCY

Name of Plan: Coleman Furniture
 Corporation Pension Plan

Date of Termination: December 31, 1985

Based on the information you supplied us, we hereby find that the assets of this Plan will be sufficient as of your proposed date of distribution to discharge when due all obligations of the Plan with respect to guaranteed benefits.

This finding is made under the Employee Retirement Income Security Act of 1974, Section 4041(b), 29 USC 1341(b).

Pursuant to the enclosed Regulation on Administrative Review of Agency Decisions, assets may not be distributed prior to 30 days from the date of this notice.

/s/ Denese Thomas
Denese Thomas
Case Officer
Case Processing Division 2/4
202- 778-8872

Exhibit I

LAW OFFICES
BERSCH & RHODES
A Professional Corporation
Suite 640, Colonial Plaza
P. O. Box 1529
Roanoke, Virginia 24007

Robert S. Bersch (703) 345-7336
Harry S. Rhodes
Alice D. Burlinson File No. 85116.6

July 15, 1987

Ms. Denese Thomas
Case Officer
Case Processing Division 2/4
Pension Benefit Guaranty Corporation
2020 K Street, NW
Washington, D.C. 20006-1806

Re: Coleman Furniture Corporation
Pension Plan
EIN/PN: 54-0176030-001
Case No.: 07764700

Dear Ms. Thomas:

We represent Mr. Roy V. Creasy, Plan Administrator of the above plan. The plan received a Notice of Sufficiency from PBGC on March 20, 1987, and the distribution deadline was extended sixty (60) days to August 20, 1987.

The participant with the largest interest in the plan is in bankruptcy. The bankruptcy trustee has filed a court proceeding requesting payment of the pension benefits to the bankruptcy trustee, rather than the participant. The Plan Administrator will not be able to distribute the participant's benefits until this issue is resolved by the Court. Therefore, we request an additional extension, which I understand will be ninety (90) days.

To confirm, please sign and return the enclosed copy of this letter, indicating the new deadline in the blank.

Thank you for your assistance. Please give me a call if you have any questions.

Very truly yours,

BERSCH & RHODES, P.C.

Harry S. Rhodes

HSR:bmb
Enclosure

Ms. Denise Thomas
July 15, 1987
Page Two

cc: Mr. Roy V. Creasy, Trustee
Ms. Gayle L. Abbott
Mr. Stephen T. McElhaney, F.S.A.

The deadline for the distribution of plan assets to participants is extended until /s/ November 20, 1987.

/s/ Denese L. Thomas 7/20/87
Case Officer CPD 2/4

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

IN RE:) FILED
ROY V. CREASY, Trustee	) AUG 27 1987
in Bankruptcy for	) Joyce F. Witt,
Coleman Furniture	) Clerk
Corporation	) By /s/ R. Collins
	) Deputy Clerk
)
	) CIVIL ACTION NO.
	) 86-0272-R
v.)
	) <u>ORDER</u>
)
COLEMAN FURNITURE)
CORPORATION PENSION PLAN,)
)
Defendant)

This case is before the court on the motion of John R. Patterson, Trustee for Joseph B. Shumate, Jr. to intervene as a party in this suit; upon the objection of Joseph B. Shumate, Jr. to said motion; upon the motion of John R. Patterson, Trustee in Bankruptcy for Joseph B. Shumate, Jr., to withdraw the reference pursuant to 28 U.S.C. § 157(d) a certain adversary proceeding in the United States Bankruptcy

Court for the Western District of Virginia, Number 7-87-0133 and upon the further motion that said adversary proceeding be consolidated into and made a part of this case because there is a common question of law and fact.

Upon consideration of all of said motions and the objections thereto, it is hereby ADJUDGED and ORDERED that John R. Patterson, Trustee, is hereby made a party to this suit with the understanding that the court does not intend the said decision to determine any of the merits of the ownership of the funds belonging to Joseph B. Shumate, Jr. in the Coleman Furniture Corporation Pension Plan now in the custody and control of Roy V. Creasy, Trustee.

It is further ORDERED that any appeals which have heretofore been taken in adversary proceeding 7-87-0133 be filed in this proceeding. All matters involved in

said adversary proceeding shall be stayed until further Order of this court, except as to the matters as contained in this Order.

It further appears to the court that the parties have this day stipulated to certain of the issues and the facts pertaining thereto, it is hereby ADJUDGED and ORDERED that the parties shall be permitted to amend or add to said stipulations and if the parties cannot do so by stipulation, the court will hear evidence of any amendments or additions to the stipulations, and it is further ORDERED that, based upon the said stipulations and briefs which are to be filed by the parties on or before September 21, 1987, the court shall be in a position to have the case submitted to it for decision.

And this cause is continued.

The Clerk is directed to send

certified copies of this Order to the United States Bankruptcy Court for the Western District of Virginia, Roy V. Creasy, Trustee in Bankruptcy, Wilson, Vogel & Creasy, P. O. Box 2420, Roanoke, Virginia, 24010, Harry S. Rhodes, Bersch & Rhodes, P. O. Box 1529, Roanoke, Virginia, 24007, Joseph B. Shumate, Jr., 1217 Memorial Drive, Pulaski, Virginia, 24301, John R. Patterson, Trustee, Dominion Bank Building, Roanoke, Virginia 24011, and G. Steven Agee, Osterhoudt, Ferguson, Natt, Aheron & Agee, 1919 Electric Road, SW, Roanoke, Virginia 24018.

ENTER: This 26th day of August, 1987.

/s/ Glen M. Williams
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

-----X Clerk's Office
JOSEPH B. SHUMATE, JR., :U.S. Dist. Court
 :AT ABINGDON, VA.
 : FILED
 : SEP 15 1987
Plaintiff, : Joyce F. Witt,
vs. : Clerk
JOHN R. PATTERSON and :By /s/ A. Cook
G. STEVEN AGEE, : Deputy Clerk
 :
Defendants. :Civil Action No.
 : 87-0189-R
-----X
ROY V. CREASY, Trustee, : FILED
 : Jun 18 1990
 : U.S. Court
 : of Appeals
Plaintiff, :Fourth Circuit
vs. :
COLEMAN FURNITURE CORP. :Civil Action No.
PENSION PLAN, : 86-0272-R
 :
Defendant. :Abingdon, Virginia
 : August 26, 1987
-----X 1:30 p.m.

TRANSCRIPT OF STIPULATIONS OF FACT
BEFORE THE HONORABLE GLEN M. WILLIAMS
UNITED STATES DISTRICT JUDGE

BRIDGET A. DICKERT
Official Court Reporter
U.S. District Court,
Western District of Virginia
P. O. Box 339,
Abingdon, VA 24210
(703) 628-8147

[Transcript, Page 1-A]

APPEARANCES:

JOSEPH B. SHUMATE, JR.
1217 Memorial Drive
Pulaski, Virginia 24301
Pro Se

G. STEVEN AGEE, Esquire
Post Office Box 408
Salem, Virginia 24153
Pro Se

HARRY S. RHODES, Esquire
Post Office Box 1529
Roanoke, Virginia 24007
Counsel for Roy V. Creasy

Proceedings recorded by mechanical
stenography, transcript produced by
dictation.

[Transcript, Page 2]

(Proceedings commenced at 1:30 p.m.)

MR. AGEE: These are stipulations of
fact with appearances by G. Steven Agee,

counsel for John R. Patterson, Trustee; Harry Rhodes, Esquire, counsel for Roy V. Creasy, Trustee; and Mr. Joseph Shumate, pro se.

(Remarks off the record)

MR. AGEE: We are stipulating as follows: first, that this court has jurisdiction to decide the matters in controversy in Civil Action Number 86-0272-R; that the remaining stipulations refer to the numbered answers in the Answer to Motion to Compel Performance filed by Harry Rhodes on behalf of Roy Creasy, and the exhibits therein. The parties agree to and stipulate answers 6, 7, 8 and 9 and do further stipulate that the "Plan" and the "Restatement" are those which are included in the court's file in this case. The parties further stipulate answers 10, 11, 12, 13, 17, 18, 19, 21, 22, 25, 33, 36, 37 and 39. The parties further stipulate that

Joseph B. Shumate, Jr. is fifty-eight years of age; his date of birth is June 6, 1929; and that his marital status is divorced, his divorce having taken effect during the year 1978. That concludes the stipulations.

(Proceedings concluded at 1:35 p.m.)

(Certificate Omitted in Printing)

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
(Roanoke Division)

ROY V. CREASY, Trustee	)	FILED
in Bankruptcy for Coleman)		Dec 4 1987
Furniture Corporation	)	Joyce F. Witt,
	)	Clerk
Plaintiff	)	By /s/ R. Collins
	)	Deputy Clerk
)	
v.	)	Civil Action No.
	)	86-0272-R
)	
COLEMAN FURNITURE)	
CORPORATION PENSION PLAN)	
)	
Defendant)	

O R D E R

This matter came to be heard upon the pleadings previously filed and the agreement of the parties as shown by their endorsement of this Order.

1. The Court finds that two issues are before it regarding payment of the benefits of Joseph B. Shumate, Jr., from the Coleman Furniture Corporation Pension Plan. First, John R. Patterson, Trustee in Bankruptcy for Joseph B. Shumate, Jr.,

claims that Shumate's benefits should be paid to him and administered as part of Shumate's bankruptcy estate. Second, Shumate claims that the amount of his benefits is greater than the amount determined by Roy V. Creasy, Trustee and Plan Administrator of the Pension Plan.

2. The Court finds that it is proper for a settlement of the issue regarding the amount of Shumate's benefits to be made which permits the payment of funds in escrow under the supervision of the Court, because this will permit Creasy to proceed with the termination of the Pension Plan without any further involvement with Shumate's benefits.

3. The Court has considered a settlement agreement dated of November 12, 1987, which has been submitted to the Court and finds that the terms of the settlement set forth in this Agreement are

appropriate.

THEREFORE, it is ORDERED that Roy V. Creasy, Trustee, as Plan Administrator of the Coleman Furniture Corporation Pension Plan, is authorized to direct the payment of \$250,000.00, representing Shumate's entire interest in the Pension Plan, from the Pension Plan to be deposited with the Clerk's Registry Fund, which fund shall be maintained by the Clerk of this Court in a short-term (no longer than 35 days) Certificates of Deposit as follows:

\$100,000.00 at Jefferson Savings &
Loan Association, Roanoke,
Virginia

\$100,000.00 at Virginia First Savings
Bank, Roanoke, [sic]
Roanoke, Virginia

\$50,000.00 at Southwest Virginia
Savings & Loan Association,
Roanoke, Virginia

Each Certificate of Deposit shall bear the Tax Identification Number of Joseph B. Shumate, Jr., (231-24-6423), and such sum is to be deposited with the Clerk of this Court in the Clerk's Registry Fund until such time as the rights between Shumate and Patterson to this fund are resolved.

It is further ORDERED that the Court ratifies, approves, and incorporates into this order by reference the Agreement between Creasy, Shumate, Patterson and the Plan dated November 12, 1987, and all the terms of the Agreement are to be enforced as part of this order.

It is further ORDERED that Roy V. Creasy, Trustee in Bankruptcy for Coleman Furniture Corporation, is dismissed as a party defendant in the Adversary Proceeding in the United States Bankruptcy Court for the Western District of Virginia, styled In re: Joseph B. Shumate, Jr., Debtor and

John R. Patterson, Trustee v. Roy V. Creasy, Trustee in Bankruptcy for Coleman Furniture Corporation and Joseph B. Shumate, Jr.; Case No. 7-84-00549; Adversary Proceeding No. 7-87-0133.

The Clerk of this Court is directed to send certified copies of this Order to the Clerk of the United States Bankruptcy Court for the Western District of Virginia, G. Steven Agee, Esq., James F. Douthat, Esq., Harry S. Rhodes, Esq., and Joseph B. Shumate, Jr.

And this case is continued.

ENTER this 3 day of December, 1987.

/s/ Glen M. Williams
Judge

We request entry of this Order:

/s/ Harry S. Rhodes
Harry S. Rhodes, Esq.
Counsel for Roy V. Creasy, Trustee
in Bankruptcy for Coleman Furniture
Corporation and Plan Administrator
for the Coleman Furniture Pension Plan

/s/ Seen and not objected to:

/s/ G. Steven Agee
G. Steven Agee, Esq.
Counsel for John R. Patterson, Trustee

/s/ Seen and not objected to:

/s/ James F. Douthat
James F. Douthat, Esq.
Counsel for NCNB Financial Services

/s/ Joseph B. Shumate, Jr.
Joseph B. Shumate, Jr.

SETTLEMENT AGREEMENT

THIS AGREEMENT, dated November 12, 1987, is between ROY V. CREASY, Trustee in Bankruptcy of Coleman Furniture Corporation and Plan Administrator of the Coleman Furniture Corporation Pension Plan ("Creasy"); JOSEPH B. SHUMATE, JR. ("Shumate"); JOHN R. PATTERSON, Trustee in Bankruptcy for Joseph B. Shumate, Jr. ("Patterson"); and the COLEMAN FURNITURE CORPORATION PENSION PLAN ("Plan").

A. Creasy, the Plan and Patterson are currently involved in a law suit entitled In Re Roy V. Creasy, Trustee in Bankruptcy for Coleman Furniture Corporation v. Coleman Furniture Corporation Pension Plan; Civil Action No. 86-0272-R in the United States District Court for the Western District of Virginia, ("the Suit").

B. Shumate, Creasy and Patterson are

or have been involved in an adversary proceeding styled John R. Patterson, Trustee, v. Roy V. Creasy, Trustee in Bankruptcy for Coleman Furniture Corporation and Joseph B. Shumate, Jr.; Adversary Proceeding No. 7-87-0133 in the United States Bankruptcy Court for the Western District of Virginia (the "Adversary Proceeding").

C. In the course of this litigation Shumate has disputed the amount of his benefits from the Plan as determined by Creasy. Shumate has also alleged that Creasy has breached his fiduciary duty to Shumate as Plan Administrator of the Plan. Creasy and Shumate wish to resolve all matters between themselves regarding the amount and method of payment of Shumate's benefits from the Plan and all other claims that Shumate may have against Creasy arising out of Shumate's participation in

the Plan and Creasy's administration of the Plan.

D. Shumate has filed a complaint with the Pension Benefit Guaranty Corporation alleging that Creasy has improperly determined the benefits under the Plan in connection with the termination of the Plan.

E. The parties intend that this agreement will settle all matters between Creasy and Shumate with respect to the Plan, but that this agreement does not resolve the dispute between Patterson and Shumate regarding the proper recipient and the proper method of payment of Shumate's benefits from the Plan.

THEREFORE, in consideration of the following mutual agreements, the parties agree that:

1. Creasy shall direct Signet Trust Company, the Trustee of the Plan, to pay

\$250,000.00 in escrow to the Clerk of the United States District Court for the Western District of Virginia to be invested in interest-bearing accounts in federally-insured banks or savings and loan associations provided that no more than \$100,000.00 of principal shall be invested in any one institution (unless otherwise agreed by Shumate and Patterson with the court's approval) during the litigation between Shumate and Patterson.

2. Upon payment to the District Court Clerk by Signet Trust Company, Shumate and Patterson shall release and discharge fully and forever Creasy, the Plan, Signet Trust Company, all other fiduciaries of the Plan from any and all claims, demands, and causes of actions which arise from any purported acts, omissions, transactions, obligations, or events connected with the participation of

Shumate in the Plan or referred to in the pleadings of the Suit or the Adversary Proceeding.

3. This Agreement is based on Shumate's benefits determined as if he had elected early retirement benefits beginning July 1, 1984. The amount of the payment from the Plan for the payment of Shumate's benefits pursuant to this Agreement has been determined on the basis of the cost of a single payment annuity providing Shumate with monthly payments of \$1,603.23 beginning December 1, 1987, and continuing for his lifetime, plus an amount representing monthly payments in the same amount beginning July 1, 1984, and continuing through November 1, 1987, and accrued interest on these payments at the rate of 7-1/2% per year. The foregoing notwithstanding, the funds paid from the Plan to the Court and the income earned by

this fund shall be the sole source of funds to satisfy the payment of Shumate's benefits from the Plan, and the amount of these benefits shall be determined by the total amount of the fund held in escrow by the Clerk when the litigation between Patterson and Shumate is resolved.

4. The method of payment of Shumate's benefits, whether as a lump-sum, an annuity, installments or some combination of these, shall be determined by the litigation between Shumate and Patterson, or any settlement therein, and shall not involve or affect Creasy in any way.

5. The parties agree that they shall seek to have this settlement approved and included, to the extent necessary or appropriate, in an order of the court. If the court's approval is not obtained, then this settlement agreement shall become void

at the election of any party.

6. Shumate shall notify the Pension Benefit Guaranty Corporation of the resolution of his dispute with Creasy and the Plan. Shumate shall execute whatever documents are necessary to terminate the PBGC administrative proceeding.

7. Shumate acknowledges that Creasy has not warranted the income tax consequences of this settlement in any way, and Shumate is not relying on Creasy as to the income tax consequences of this settlement.

8. The parties agree that any term of this agreement, including the payment of the amount specified in paragraph 1 of this agreement should not be construed as an admission or acknowledgment by any party of the accuracy of any allegation or of any wrongdoing under Federal, state or local law.

9. This agreement constitutes the complete understanding between the parties.

WITNESS the following signatures:

/s/Roy V. Creasy
Roy V. Creasy, Trustee
in Bankruptcy of the
Coleman Furniture
Corporation and Plan
Administrator
date /s/ 11-20-87

/s/Joseph B. Shumate, Jr.
Joseph B. Shumate, Jr.
date /s/ 11-20-87

/s/ John R. Patterson
John R. Patterson, Trustee
in Bankruptcy for Joseph
B. Shumate, Jr.
date /s/ 12/1/87

COLEMAN FURNITURE
CORPORATION PENSION
PLAN

/s/Roy V. Creasy
by Roy V. Creasy,
Plan Administrator
date /s/ 11/20/87

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF VIRGINIA
Roanoke Division

-----x Clerk's Office
ROY V. CREASY, TRUSTEE, :U.S. Dist. Court
Plaintiff, :AT ABINGDON, VA.
vs. : FILED
: /s/For Roanoke
: Oct 04 90
: Joyce F. Witt,
: Clerk
COLEMAN FURNITURE CORP. :By /s/ E. Stokes
PENSION PLAN, and JOHN : Deputy Clerk
R. PATTERSON, TRUSTEE, :
INTERVENOR, :Civil Action No.
: 86-272-4
Defendants. :December 16, 1987
:1:45 p.m.
:Abingdon,
-----XVirginia

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE GLEN M. WILLIAMS
UNITED STATES DISTRICT JUDGE

APPEARANCES:

G. STEVEN AGEE, Esquire
Osterhoudt, Ferguson, Natt,
Aheron & Agee
1919 Electric Road, SW
Roanoke, Virginia 24018

Counsel for Defendant John R.
Patterson, Trustee.

JOSEPH P.[sic] SHUMATE, JR.
1217 Memorial Drive

Pulaski, Virginia 24301
Pro Se.

Proceedings recorded by mechanical
stenography, transcript produced by
dictation.

BRIDGET A. DICKERT
Official Court Reporter
U.S. District Court,
Western District of Virginia
P. O. Box 339,
Abingdon, VA. 24210
278 ARLINGTON AVE., BRISTOL, VA. 24201
628-8147 (703) 466-5562

[Transcript, Page 2]

THE COURT: Good afternoon, gentlemen.
Case of Roy V. Creasy, Trustee in
Bankruptcy of Coleman Furniture
Corporation v. Coleman Furniture
Corporation Pension Plan Inc., Civil Action
Number 86-0272-R. And this case is before
the Court this afternoon for evidence to be
presented in regard to Mr. Shumate's claim
for pension benefits. I entered an order
sometime ago, which it was determined that

these funds should be held in trust to be determined whether or not they be payable to John R. Patterson, who is the trustee in Mr. Shumate's personal bankruptcy case, or whether they be paid directly to Mr. Shumate personally. So, I'm ready at this time, gentlemen, if I correctly stated the matter, to hear any evidence you have to present, or anything you have to say about this matter.

MR. AGEE: Your Honor, if it please the Court, there are several items that we weren't able to get on the record at the hearing in August I think the Court will need in order to make its final decision, and it shouldn't take very long to put those on. If Mr. Shumate has any evidence, of course, he can put his in and we can make some comments for the benefit of the Court with respect to this. So, I'll go ahead and proceed.

Judge, when we had made the stipulations on the record at the August hearing, I think all the parties were under the impression that there was a copy of the Pension Plan with the [Transcript, Page 3] amendments in the Court's file. I think that was probably correct. They may be in another of the many files in these cases, so I have the Pension, the original Pension Plan which was adopted in 1963, and there was a restatement effective December 1, 1976, and a final restatement effective December 1, 1984. I have these here, have those here with certificates from Roy Creasy, the plaintiff administrator, that they are authentic copies, so I'll go ahead and offer those now.

THE COURT: Do you want to mark them as any particular exhibit? If you want to mark anything, say so.

MR. AGEE: I would like to mark the

original as our Number One.

THE COURT: Very well. If there's no objection, the original Pension Plan will be filed as Exhibit One.

MR. AGEE: Judge, we may want to denominate those One, Two, and Three to differentiate between the original and two restatements, if that's okay.

THE COURT: All right. Give the restatement -- do you have a date on them?

MR. AGEE: Yes. The original would be the December 1, 1963 plan, Exhibit Two would be the restatement effective December 1, 1976, and Exhibit Number Three would be the restatement effective December 1, 1984.

THE COURT: Very well. They'll be marked and filed [Transcript, Page 4] as Exhibits One, Two, and Three.

MR. AGEE: The next item, Your Honor, is an affidavit from Roy Creasy, the Trustee in Bankruptcy for Coleman Furniture

Corporation. I believe Mr. Creasy discussed the contents of this with you yesterday.

THE COURT: He didn't discuss any contents; he just told me he was making an affidavit in lieu of coming down here.

MR. AGEE: You're correct, Your Honor. I misstated that. The affidavit states the assets in the Pension Plan, and what the remaining expenditures and estimated expenses to close out the Plan are, and I would offer that, too, as Exhibit Number Four.

THE COURT: Do you have a copy of that, Mr. Shumate?

MR. SHUMATE: Yes. This is not signed, Your Honor, the copy I have, and I would object to it.

THE COURT: Well, as long as it's the same copy, it doesn't matter whether yours is signed or not. See if it's the same

copy.

MR. SHUMATE: I don't have these records, so I can't verify them. I have to use his signature to verify them.

THE COURT: Well, let him see the --

MR. AGEE: None of these are signed. Mr. Creasy gave me these about 11:00 last night. I didn't look at them until we got here, Judge. It's not signed. How about if I [Transcript, Page 5] put this in and let Mr. Shumate object to it, and Mr. Creasy can make another affidavit at another time, if that's okay.

THE COURT: Well, I think that's fine. In other words, I won't be considering this. Whatever value it may be to us today, it will be admitted with the understanding it's not verified.

MR. AGEE: So, I'll offer this as Number Four.

THE COURT: I understood this was just

basically an accounting thing that Mr. Creasy was going to be giving, and I thought he could give it by statement as well as -- if there's some question about it, we could take it up.

MR. AGEE: Mr. Shumate's point is well taken. He didn't sign it. And he offered this in lieu of appearing today, and I think he can, it won't be difficult for him to correct the omission of not having signed the affidavit. I have three remaining exhibits. The first two are certified copies of proofs of claim filed by NCNB in Mr. Shumate's personal bankruptcy case which are certified from the Clerk of the Bankruptcy Court.

THE COURT: You say these are certified by the Clerk?

MR. AGEE: Yes.

THE COURT: They will be marked Exhibit Five. Do you have a copy of that

for Mr. Shumate?

MR. AGEE: No, I don't.

[Transcript, Page 6]

THE COURT: Well, file it and I'll have the Clerk make him a copy. Well, I assume you have a copy of this, don't you?

MR. SHUMATE: I don't have a copy, but I would like to point out to the Court that the IRS claim is disputed, and there is civil action pending on that. Also, on the original claim of NCNB for \$8,000,000, it's disputed, and the claim they adjusted and filed in November of this year --

THE COURT: Well, I understand, all this is just a claim.

MR. SHUMATE: What they use to support is the one the trustee signed and, of course, that claim is not, that agreement is not valid with anyone except the trustee.

THE COURT: Well, this one is dated

November 3, 1987 by the Bankruptcy Clerk, and it is a letter from Mr. Douthat, and I assume you got a copy of it.

MR. SHUMATE: No, sir, I did not. I found it in the file, but I didn't get a copy of it. But the agreement is the same agreement that was made between the trustee and NCNB which was agreed upon on October 30, and that agreement was just between the trustee and NCNB, and but did not relate to anyone else.

MR. AGEE: Your Honor, the certified proofs of claim filed as Exhibit Five are filed solely to show that there are pending claims in that case.

[Transcript, Page 7]

THE COURT: Well, hold it just a minute, Mr. Agee. The only thing -- Mr. Shumate, do you have a copy of this so I won't have to bother making another copy right now?

MR. SHUMATE: I do not have a copy of the November 3 --

THE COURT: I don't mean with you. Do you have a copy?

MR. SHUMATE: No, sir.

THE COURT: You mean that NCNB, at the time they delivered this to the Clerk back on November 2, 1987, didn't give you a copy?

MR. SHUMATE: No, sir.

THE COURT: Well, it is exactly the same thing as that contained in my court order dated the 30th of October in which NCNB Financial Services is allowed a \$2,522,259.27 unsecured claim against the estate of Coleman Furniture Corporation, and all in the world this is is an amended, amendment filed by NCNB on November 2, 1987, asserting this also as a lien against you personally.

MR. SHUMATE: Your Honor, as I tried

to point out --

THE COURT: Well, I'm not going into whether you owe this or not right now. All I'm going into is whether it's necessary, I mean, do you know that they're now claiming this two million some dollars that was contained in the settlement agreement between NCNB, against you.

[Transcript, Page 8]

MR. SHUMATE: Yes, sir, I do know that.

THE COURT: Okay. And the other document is that the Internal Revenue's asserting a claim of \$211,867.09 and the County of Pulaski, \$6,605.94.

MR. SHUMATE: I'm well aware of the Internal Revenue claim, sir.

THE COURT: Well, in other words, this is a proof of claim filed in Bankruptcy Court.

MR. SHUMATE: The county claim would

be for taxes, and I believe that would belong to the trustee at the time for the real estate.

THE COURT: All right. I'll have the Clerk to mark the claims of NCNB, the original and the amended claim, to be marked filed as Exhibit Five, and the claim for taxes to be marked as Exhibit Six. All right. Do you have anything else, Mr. Agee?

MR. AGEE: Your Honor, I need to ask Mr. Shumate a few questions in his capacity as a former officer and director, so, if I could call Mr. Shumate.

THE COURT: All right. Swear Mr. Shumate.

JOSEPH B. SHUMATE, DEFENDANTS'
WITNESS, SWORN
DIRECT EXAMINATION

BY MR. AGEE:

Q. You are Joseph B. Shumate, Jr.?

A. Yes.

[Transcript, Page 9].

Q. Mr. Shumate, I just direct your attention from 1978 until the time that Coleman Furniture entered the Chapter 11 bankruptcy, during that period of time you were the president of the company and, also, chairman of the board of directors; is that correct?

A. No, sir.

Q. Were you president of the corporation?

A. Not all of that period of time, no.

Q. During what portion of that period were you not the president?

A. I became president in 1979.

Q. And were you president continuously from then until the corporation entered Chapter 11 proceedings?

A. Yes.

Q. And the board of directors was composed of how many members from the time the buyout of stock was finished in 1978 until

the Chapter 11 proceeding?

A. Four directors.

THE COURT: Four directors besides you?

THE WITNESS: Three directors including myself.

THE COURT: Three and you make four?

THE WITNESS: Yes.

BY MR. AGEE (Resuming):

Q. During that period of time, were you also the administrator of the Coleman Furniture Pension Plan?

[Transcript, Page 10]

A. Yes.

Q. During that period, and we'll start in 1978 when the buyout was terminated, is it correct that there were approximately 19,000 shares of stock outstanding?

A. That would be an approximate figure, yes.

Q. And of that number, you owned

approximately 10,835 shares in your own name?

A. That would be an approximate figure.

Q. And there were approximately, excuse me, there were approximately 7,608 shares that were in an irrevocable trust; is that correct?

A. I don't remember the exact number.

Q. Does that sound like it's approximately correct?

A. It would be in the ballpark, yes.

Q. You had the right to vote those shares during that period of time; isn't that correct?

A. I did.

Q. And the trust, are there any copies of that irrevocable trust today?

A. I'm not sure.

Q. Were you the one who established the trust?

A. Yes.

Q. So, at one point in 1978, at least, you would have owned not only the 10,835 shares, but also the 7,608?

A. That trust I did not own in 1978.

[Transcript, Page 11]

Q. How did it get into that trust?

A. The funds were transferred from one trust to another.

Q. Could you tell the Court a little bit about how that transferred, and from what trust they went to what other trust?

A. The funds were in trust for my children, and when I took the company private, my ex-wife insisted that the children be bought out at the same time, and I had to buy out that estate, or that trust, and I took the funds, I took the stock and put it into another trust.

Q. So, would it be correct to say you, yourself, purchased the stock from one trust and then turned around and put it

into another?

A. I transferred it from one to another, that is correct.

Q. Were you under any binding legal obligation to do so?

A. No, sir.

Q. And the irrevocable trust that existed from that point approximately in 1978, have you revoked that trust?

A. I have revoked it.

Q. And is it correct to say that you had the power to revoke and turn the shares into your name at any time during that period?

A. I did.

Q. Did you say yes?

A. Yes.

Q. And one last question. In ordinary corporations, first [Transcript, Page 12] the shareholders would elect the directors, who in turn would elect the officers of the

board of directors. Is that the procedure followed by the corporation?

A. That is the procedure required by law.

MR. AGEE: That is all I have. That is all the evidence I want to put on.

THE COURT: Do you want to remain seated and testify as to anything you want to say, or do you want to testify?

MR. SHUMATE: I'd like to point out from the standpoint of the Plan administrator, the Plan administrator in Mr. Agee's arguments did not have the authority to terminate the Plan. The Plan administrator could only administer the Plan and administer the Plan to the benefit of the corporation as the Plan so directed. I mean he had no right to, to, to terminate the Plan as he just stated. The, I have, I planned on proving this, but I'm on the stand and I'll state, I had the, from the standpoint of the Plan, I've already

discussed in my reply brief that a corporation, that an officer of the corporation can also be a trustee of the Pension Plan or the Plan administrator of a pension plan, and it would not be a conflict of interest. I cited the cases which have just recently been decided in various circuits throughout the country, and there's no conflict as long as you administer the plan to the benefit of the employees.

Now, he is stating that I had the authority to terminate [Transcript, Page 13] the Plan, and that is not correct. The Plan, when the corporation entered into a loan agreement with NCNB, and the loan agreement specifically stated that the, stated that all the collateral the company had was part, was collateral for the loan, and in the covenants, in the loan it so specified that in Article Four that you

could only use any funds, liquidated assets of the company --

MR. AGEE: Are the documents -- I'm going to object. Are the documents in evidence --

MR. SHUMATE: I'll put them in evidence right now. This is a signed copy of the loan document between Coleman Furniture Corporation and NCNB, dated January 4, 1974, seventy-eight. And we had that as Exhibit Number One and we'll look at the loan agreement, on page -- I'd also like to submit this as Exhibit Number Two--

THE COURT: Well, since we didn't have those others, let's have those marked, these two documents as Exhibits Seven and Eight. Now, what is the first one, Exhibit Seven? What is it?

MR. SHUMATE: Exhibit Seven would be a copy of the loan documents between Coleman Furniture Corporation and NCNB,

dated January 4, 1978.

THE COURT: All right. And Exhibit Eight?

MR. SHUMATE: Exhibit Eight would be supplemental evidence for turnover of pension assets to participants.

[Transcript, Page 14]

MR. AGEE: Is this an exhibit or --

MR. SHUMATE: This would be an exhibit.

THE COURT: Well, now, where is that from? From the records of Coleman?

MR. SHUMATE: These are basically, basically is a list of cases which I have, cases which I will reveal at this time.

THE COURT: Well, we don't need cases. I want evidence right now. You can refer to law later on.

MR. SHUMATE: On Article Three --

THE COURT: What's Exhibit Eight?

MR. SHUMATE: This is Exhibit Seven.

Exhibit Eight has supporting arguments, cases and also, also, excerpts from the loan document.

THE COURT: What I'm getting at is what you handed to the Clerk marked as Exhibit Two, and I'm calling as Exhibit Eight.

MR. SHUMATE: That's supplemental evidence --

MR. AGEE: I don't want that marked as evidence. It's basically a memorandum. It can be submitted as a memorandum, but not as evidence.

MR. SHUMATE: Also, I have excerpts from a loan agreement --

THE COURT: Now, have you already filed this previously?

[Transcript, Page 15]

MR. SHUMATE: This is a supplement to what I previously filed?

THE COURT: Supplement to what you

previously filed?

MR. SHUMATE: Yes.

THE COURT: Do you have a copy of it?

MR. AGEE: Just got it, Judge.

THE COURT: Well, the Court will receive it. It's already marked as Exhibit Eight on it, so I'll just leave it that way. It's not really an exhibit, but it's entitled to be filed as argument.

MR. SHUMATE: In the agreement on page five of the Loan Article Three, it states that the collateral referred to in Section Three should be used for the purpose intended by its purchase in the business of the company.

THE COURT: Now, wait a minute. Where are you reading from?

MR. SHUMATE: This is out of the loan document book and the loan, itself, Article Three, paragraph 3.4.

THE COURT: Article Three, paragraph

what?

MR. SHUMATE: Three point four.

MR. AGEE: Could I have a copy of the pages you are reading from?

MR. SHUMATE: I gave you a copy of this.

MR. AGEE: It's in this thing right here?

MR. SHUMATE: Yes.

[Transcript, Page 16]

MR. AGEE: Okay.

MR. SHUMATE: What I'm pointing out, in signing this agreement, I agreed that no collateral or assets of the company would be sold and liquidated unless it was used in the company or turned over to NCNB. That eliminated any opportunity of me being able to take a dividend as Mr. Agee has inferred. In Article 401, paragraph H on page 15, another covenant --

MR. AGEE: I don't have a copy of

that.

MR. SHUMATE: On page 15, paragraph H, there is a negative covenant that states I cannot declare a dividend for any fiscal year on any more than \$50,000, other than dividends payable solely in shares of common stock. However, before any dividend payment, after tax profits must exceed the debt service by \$50,000. In 1980 and 1981 and 1982, the tax, the income after taxes did not exceed the debt service by \$50,000, and therefore, you can not pay any dividend whatsoever. That is basically the evidence which I have to submit at this time for the arguments that Mr. Agee has submitted in the last couple of months. However, I do have some cases I'd like to refer to which support my position in this matter, that this is a spendthrift trust.

THE COURT: All right. I take it that both sides have concluded their evidence.

MR. AGEE: Yes.

[Transcript, Page 17]

THE COURT: And the principal issue in this case is whether or not this was, would come under a spendthrift trust and thus be excepted from being a part of the estate.

MR. AGEE: Yes. That's basically the issue. — —

THE COURT: All right. I'll hear you first then, Mr. Shumate, on your argument.

MR. SHUMATE: Your Honor, --

THE COURT: Do you have a list of cases you want to present to me?

MR. SHUMATE: The list is in the supplemental evidence which is submitted as --

THE COURT: Everything is in it then? All the cases?

MR. SHUMATE: I have a couple more which I would discuss, also.

THE COURT: Well, if you get to any

that are not in here, tell me.

MR. SHUMATE: All right, sir. I want to point out in 1964 when the Coleman Pension Plan and Trust was established, which was retroactive back to November 1, 1963, the purpose of this was to provide a pension for its employees for their sole use at retirement. And the reason for that was to guarantee these people that they would have an income after they became unable to work, and in doing so, Coleman structured this Plan in the manner of a spendthrift trust so that the [Transcript, Page 18] benefits of the Pension Plan would actually be paid to participants and would not be assigned, alienated from the participants. This was also required at that time to make the Plan cost deductible to the settlor and the Internal Revenue Code. In 1974 when Congress passed the Employee Retirement Income Security Act,

known as ERISA 29 USC Section 101, which mandated spendthrift trust provisions in all of the pension plans in order for a plan to qualify under ERISA, in other words, after 1974 you had to put the spendthrift trust provisions into the Plan to qualify for ERISA. Also, the Internal Revenue Service also bona fide their code under 26 USC Section 401(a)(13) which states that,

"A trust shall not be considered actually a qualified trust under this section unless the plan of which such trust is a part provides that benefits provided under the plan may not be assigned or alienated.

Now, the Internal Revenue Service also enacted that at this time in order for a plan to be qualified, which our Plan is qualified, that it had to have, that it had to have an alienation and assignment clause in it. Now, the Code of Virginia, Section 55.19 enumerates the requirements for a

spendthrift trust, and these requirements are, one, it sets a dollar limit. The dollar limit today is 500,000. The fund must be put in the trust. Both the corpus and income there- [Transcript, Page 19] from can be used to pay benefits to the beneficiaries, and also, the trustee must apply the funds for the support and maintenance of the beneficiaries. That's what he has to do with it. And the funds must not be subject to the beneficiaries' liabilities or alienation. And, no trust shall operate to the prejudice of any existing creditor of the creator of the trust. In other words, if the settlor wanted to take these funds and take them away from one of his creditors and create the trust, that would not be a spendthrift trust. But this trust was established in 1964 retroactive to November 1, 1963. The trust was not established to prejudice any

existing creditor at that time. No creditor came forth. And the Coleman Pension Plan complies with Section 55.19, Spendthrift Trusts, of the State of Virginia. The provisions are in there and I believe this Court approved it in February 19, in February of this year, and it was an approved Plan, approved by ERISA, as well as the Internal Revenue Service, in order for the Plan to be modified or closed out.

Also, I'd like to point out Virginia courts, as well as federal courts have ruled consistently that this statute is protective remedial and not restrictive and should be construed liberally. Landmark cases supporting this interpretation are Sheridan v. Krause which was in 1934, and I'm not going to give you the cites, it's a Virginia case, and then Alderman v. Virginia Trust Company, 1943. This was a

case [Transcript, Page 20] where the president of the University of Virginia established a spendthrift trust for his wife and son, and it was adjudicated because his son violated the trust and tried to assign his trust to other people. It was a very interesting case. He was the past president of the University of Virginia. And this case was heard, was decided in 1943. Also, Roundtree v. Lane, which is a Fourth Circuit case. Also, Allen v. Wilson. This was decided in the Bankruptcy Court for the Western District of Virginia in 1980, upholding the pension is a spendthrift trust. 11 USC Section 541(c)(2) states that,

"A restriction on the transfer of a beneficial interest of the debtor in a trust that is enforceable under applicable nonbankruptcy law is enforceable in a case under this title."

And probably the principal case in

that is McLean v. Central States, which was settled by the Fourth Circuit in 1984 (sic), which we have both cited in our briefs, and the Court ruled that because of the pensioners' interest, the trust fund was in the hands of the fund trustee and it was subject to enforcement restrictions. The Court also ruled that the anti-assignment provision of the trust agreement would be enforceable, recognizing enforceability of spendthrift trusts, protection of which may run to both income and corpus. The Virginia spendthrift trust statute is basically the same as the Illinois statute, and the reason they have the [Transcript, Page 21] Illinois statute in here is the fact that the pension trust fund was headquartered in Illinois.

And then another interesting case is Smith v. Mirman, 1984, and this court ruled further -- this was the Fourth Circuit --

ruled that employees who accrued benefits under qualified ERISA may not be reached by judicial process in aid of a third party creditor. The court went further to state on page 182 that,

"A trust will not constitute a qualified trust under this section unless the plan, of which said trust is a part, provided that benefits provided under the plan may not be assigned or alienated."

This was also a very interesting case because that was pertaining to a case which was being terminated and then ruled that even though the case was being terminated, it was still a spendthrift trust.

In a 1986 case, the court held that despite the fact that the debtor was a self-employed professional, the pension plan and trust were enforceable against general creditors, and thus, were excluded from the bankruptcy estate. Now, this was a self-employed professional.

In a 1985 case, the court held that spendthrift provisions of a trust were enforceable under Nebraska law. Now, Nebraska law is very similar to Virginia law. Another case, In Re: Crenshaw, 1985, the court ruled that the pension plan [Transcript, Page 22]

qualified as a spendthrift trust under Illinois law, therefore, the pension plan was excludable from the debtor's estate. In another 1985 case, the court ruled that the trustee had no interest in pension funds. In Re: Matson, a 1986 case, the Bankruptcy Court in Colorado, the court held that the debtors' interest in the plan was not the property of the state where the plan qualified as a spendthrift trust under Colorado law.

Of course, we've already addressed the last issue. This is the issue on the standpoint of control. As I pointed out to

you before, I did not have control to, if I did, if I, as principal stockholder of the company, had elected to terminate the Pension Plan, I would not have profited from the same whatsoever. The Pension Plan was such that if I had terminated the Plan, I would have had to use those funds, surplus funds or the funds that would have been returned to the corporation in the business or turned them over to the creditor. Those are just the predominant cases that a spendthrift trust as specified by state law and spelled out in 541(c)(2) is just, there's cases after cases after cases, it's exempt from the estate. Thank you.

THE COURT: All right, Mr. Agee?

MR. AGEE: Your Honor, if it please the Court, previously I filed a brief dated September 21, which I believe is in the Court's file, and subsequent to that a

letter dated October 5 to Your Honor, which served as a supplement to the [Transcript, Page 23] brief after Mr. Shumate had filed a reply brief. Now, I'll briefly recap the argument, particularly with respect to the decisions of the Circuit Courts of Appeal.

The first issue that the Court would have to face in this matter is whether or not the Pension Plan assets are property of Mr. Shumate's bankruptcy estate. I don't think there's any argument about that. All of the Circuit Court of Appeals' cases are clear. The Pension Plan entitlements are property of the debtor's estate.

THE COURT: Before you go any further, what date did you say that letter was you wrote me?

MR. AGEE: October 5. I may have sent that to you directly, Judge, and not have filed it in the Clerk's Office, so it might not have been in the file.

THE COURT: All right. I have it.

MR. AGEE: Having determined that Plan assets of the debtor are property of the bankruptcy estate, then the Court has to determine is there an exclusion under the Bankruptcy Code to exclude it from, from the estate, or is there a possible exemption, and the exclusion language which has already been referred to is in 11 USC Section 541(c)(2), and without going into a lot of detail, that says that there is a restriction on the transfer of interest that's enforceable under applicable nonbankruptcy law, then that will act to exclude the particular asset from property of the estate. And [Transcript, Page 24] that key language is applicable nonbankruptcy law because that's what Circuit Courts of Appeal have focused on in deciding this particular issue, and the cases that have dealt with that.

Is the, is the qualified Plan interest of the debtor excluded under the applicable nonbankruptcy law of the state in which the debtor resides? The first case that dealt with that was in the Fifth Circuit, In Re: Goff, (phonetic). The Goff court went into great detail on the legislative history of that phrase from Section 541(c)(2), and it found in a House report, which was the report used with the Bankruptcy Reform Act of 1978, this is on page nine of my brief, that the Section 541(c)(2) restriction continues the exclusion from property of the estate of the debtor's interest in a spendthrift trust to the extent the trust is protected from creditors under applicable state law. The Goff court then concluded that the reference to applicable nonbankruptcy law is to exempt only those spendthrift trusts traditionally beyond the reach of creditors under state law. The

other circuit court of appeals cases, the Ninth Circuit In Re: Daniel, the Eighth Circuit In Re: Graham (phonetic), and the Fourth Circuit in the McLean case have all agreed with that. It does not create an ERISA exemption for the pension plan assets in the debtor's bankruptcy estate. There has to be an exclusion that's claimed under the applicable state law. I [Transcript, Page 25] don't think there's any question that in this case the applicable state law is Virginia law. The employer establishing the plan was a Virginia corporation, the site of the trust is in Virginia, the debtor is in Virginia, so we look to try to find in Virginia law what does it say about a spendthrift trust in this particular situation?

Judge Shelley of the Bankruptcy Court in the Eastern District rendered a decision

In Re: O'Brien in 1985. In that case there was a physician, Dr. O'Brien, who established a Keogh plan. So, Dr. O'Brien was the settlor of the plan, was also the beneficiary. And under a very lengthy spendthrift analysis, Judge Shelley does about as good a job of any law review article of tracing Virginia Spendthrift law, and I would remember that case to the Court because I think it's got about every citation on Virginia spendthrift trust law that you could hope for. Judge Shelley's opinion was the bankruptcy trustee of Dr. O'Brien could reach the asset and it was not an excludable asset from her estate, and the reason was the irrevocable nature of the Keogh plan. It was that Dr. O'Brien could revoke the plan at any time, but because of that power of revocation, she would not be allowed to place her assets beyond the reach of her creditors because

of the protection of the spendthrift provisions in her plan. And a Keogh plan is very similar to a pension plan that's established by corporate sponsor, has the same spendthrift trust protections.

[Transcript, Page 26]

Then the 11th Circuit decided a case called Lichstrall (phonetic). Dr. Lichstrall was the beneficiary of a corporation pension plan, and Dr. Lichstrall went into bankruptcy, and the 11th Circuit said we're not going to allow Dr. Lichstrall to say that this is an excludable asset because he, too, had the power to revoke the plan by virtue of his control of the corporate sponsor, and that's what brings, through Judge Shelley's analysis in the O'Brien case, and the Circuit Court of Appeals' decision in Lichstrall, the Court to where it can examine Mr. -Shumate's situation in the

Coleman case.

Now, the argument on behalf of Mr. Patterson, Mr. Shumate's trustee, could only be made against Mr. Shumate and no other participant in the Coleman plan. There are about 400 participants, but by no one except Mr. Shumate could this argument be made and that's because of a key element of control and the irrevocable nature of the Pension Plan that makes this argument feasible, and I think brings it in line with the Court of Appeals' decision in Lichstrall and the other cases that are cited in the brief, and that's this. The, at any time from 1978 on, because of the voting control that Mr. Shumate had over Coleman Furniture Corporation, he could have caused, under Section 9.2 of the Plan, the Plan to terminate. There was no restriction on him. He had the legal authority to do that. And once the Plan

was terminated, approximately 19 percent of the assets of the Plan, as we view them today, [Transcript, Page 27] would have passed directly to Mr. Shumate. The Plan, the total Plan assets amounted to about a million four. After expenses there were net assets to distribute of about \$1,350,000, \$200,000 already paid into the Court pending decision in this case. There's a reversion back to Coleman Furniture of approximately \$516,000 and approximately \$569,000 have already been paid out to participants, and those are all outlined in the affidavit. So, the funds that have then returned back to Coleman Furniture Corporation, either paid out as a dividend or applied to the debts of Coleman Furniture Corporation, for which there is at least an alleged liability on Mr. Shumate's part. Once again, his voting control of the company gave him the ability

to take the reversion, 96 percent of that \$516,000, and have it applied directly or indirectly for his benefit. It's not important that he never did that, or the circumstances that arose, but he had the power to do that because that's what's important, and whether or not the spendthrift provisions of the Pension Plan are to be observed in his case, the power was there with which the Plan could have been revoked at any time, and once the Plan was revoked, Mr. Shumate would have stood to benefit to the tune of about 55 percent of the total assets of the Plan, either directly or indirectly, upon the Plan's dissolution. And it's that power that makes the spendthrift provisions of the trust inapplicable to Mr. Shumate in this case, and so, under the phrase

[Transcript, Page 28]

nonapplicable bankruptcy law, there is not

an exclusion for Mr. Shumate's pension benefits because of his power and control over that.

There are some other arguments that have been made in the brief with respect to whether if the property is not excluded from his estate, could it be possibly be exempt, and I don't think there are any merits to those particular arguments. The only bankruptcy exemptions that are available in Virginia are those provided by the Virginia statute which would be under the Homestead deed. There was no claim on the petition, there was no Homestead deed filed, so there are no bankruptcy additions available for the benefits. That's the sum and substance of the trustee's argument in this case, Your Honor.

THE COURT: All right.

MR. SHUMATE: Your Honor, if it please the Court, I'd like to dispute Mr. O'Brien,

Mr. Agee's statement on the case of O'Brien. Mr. Agee said that Dr. O'Brien, who was Mrs. O'Brien, was the settlor of the trust. That is not correct. If you would read the O'Brien case, there were two people, two doctors, her husband was a doctor and she was a doctor. The settlor in the case was Dr. John P. O'Brien. Judge Shelley ruled to the contrary, even though John O'Brien was settlor. I want to point out to the, to you in this case, it's not the same. On page 75 it states Dr. John P. O'Brien is settlor of the trust having made all contributions to the Keogh plan. [Transcript, Page 29] Now, this was a, this was certainly not the case. This was a one person Keogh self-employed retirement plan. This was not a trusted arm's length retirement plan which was funded, the settlor was a separate entity, a corporation known as Coleman Furniture.

The O'Brien case is certainly not a comparable case to use, and also the McLean case which is a Fourth Circuit case contradicts this, just, is just not a comparison. I think we have to look at the Fourth Circuit ruling before we go to the Eastern District of Virginia bankruptcy courts. There's just no comparison there. It's not the same.

Now, on the case of Lichstrall, he practiced medicine, he was a single employee, had no other employees, and he also had the right to do whatever he wanted to. He could borrow from it, he could borrow from the plan, he could buy a house with it, anything he wanted to. So, the court ruled that the, that although the two pension plans contained anti-alienation provisions, they were not spendthrift trusts under Florida law as the beneficiary could amend and terminate the plan in his

capacity as agent of the settlor. Again, I am not the agent, I was not the agent of the settlor in the Coleman case. He was the agent. He was the owner. I wasn't the owner of the Plan. It was a separate entity and I think that Lichstrall is not applicable to this case at all. I think if you want to look at applicable cases, you should look at the Bankruptcy Court in the Western District of Virginia, Allen v. Wilson [Transcript, Page 30] settled by Judge Pearson, also McLean, Mirman, both Fourth Circuit Courts, Roundtree v. Lane, Fourth Circuit. These would be, in my opinion, would be more applicable than these cases. Also, I'd like to point out that the cases he mentioned, Graham, Goff, Lichstrall, the Fourth Circuit said that they thought that those cases were not correct. They thought they were flawed. That's the exact word the court used.

Now, from the standpoint of control, there are thousands of pension plans throughout the country which are administered by officers of the company. And there have been various rulings of the court which I have presented to you in brief that as long as you rule in favor of the employees, there is no conflict whatsoever, and I think you'll find that I, in the 20 some years I was the Plan administrator, I always ruled in favor of the employees. In fact, I argued against amendment of the last plan because I did not believe it was to the benefit of the employees, which you well remember. But in these cases which he's talking about, the Fourth Circuit has overruled these cases, not overturned, but they have ruled in different ways.

Also, I originally submitted to you some Supreme Court cases on ERISA. This

particular situation has not been addressed by the Supreme Court to my knowledge, but the Supreme Court in their rulings indicate that they feel, in the cases in which I submitted to you in my first draft, my first [Transcript, Page 31] brief, that the ERISA, that the retirement plan benefits are exclusively for the participants, and was not to go to anyone else. That was labor law, and actually from the standpoint of the bankruptcy law, the Supreme Court has never ruled to my knowledge.

I wish to point out to you, look at the Fourth Circuit rulings and the rulings in the Western District which support my position. Also, that the Coleman Pension Plan qualifies as a spendthrift trust under Virginia law.

THE COURT: Let me ask you one thing. There's no major contention, as I understand it, on the matter of control,

and they're saying that certainly there's no greater power that a person could have than to just dissolve it, end it, terminate it, and that you had, you've shown by your evidence here today complete power at any moment of time beginning in 1978 under Article 9.2, The Power to Terminate. Do you dispute that?

MR. SHUMATE: I did not have the power to terminate the Plan for my benefit, which they have argued.

THE COURT: Did you have the power to terminate it period, voting power to terminate it?

MR. SHUMATE: I had the voting power to select directors, yes.

THE COURT: And the directors have the power to terminate?

[Transcript, Page 32]

MR. SHUMATE: That is correct. However, if the directors had terminated

the Plan, no stockholder would have gotten any benefit out of the termination of the Plan.

THE COURT: Why not?

MR. SHUMATE: Because as I pointed out to you, after 1978, under our term loan agreement, that any liquidation had to go to the creditor of the company or go back into the operation of the business, and that no dividend could be paid from the company to the stockholders, which I pointed out to you in the loan document which has been submitted as evidence today. They say I can do this for my benefit. I couldn't do this for my benefit whatsoever.

THE COURT: All right. I wanted to get their original premise out of the way, and so if you disputed that, so you say that's true, but that even with that being true, there's no way you could have taken

this to your benefit because of the loan agreement?

MR. SHUMATE: That is correct. Also, after November 4, November 3, 1982, I could not terminate the Plan without the approval of the Bankruptcy Court. After February 18, 1983 I did not have the authority to even recommend terminating the Plan, as then it was under the hands of the trustee.

THE COURT: I understand.

MR. SHUMATE: This Plan was never terminated and no [Transcript, Page 33] effort was ever made to terminate the Plan prior to the time the trustee came on board. And I would have certainly been in violation of my fiduciary responsibilities if I had attempted to terminate the Plan prior to that for my benefit, as I could not terminate the Plan, and not be prejudiced towards, or detrimental to the participants in the Plan. And the way the

Plan was terminated was detrimental to the participants. That's how the surplus came about, is because the participants were penalized, and this was the argument I made right there. If we terminated the Plan according to the way the trustee questioned, then the participants would be penalized. But when I had control of the Plan, there was only a \$50,000 surplus in the Plan. That was in 1982. After the Plan was terminated an individual's seniority was wiped out. That's when the surplus occurred. And I argued against that all the way, as you remember.

THE COURT: Yes.

MR. SHUMATE: In my reply brief, which was filed on September 28, I brought to the attention of the Court a case in the 11th Circuit which was decided this year, Beaks v. Masters, Mates & Pilots (phonetic), and it states that a fiduciary

can act on behalf of both parties until a situation arises which requires action in the interest of the party other than a conflict with the interest of the plan beneficiaries. The report goes on to state that the statutory [Transcript, Page 34] imposed fiduciary duty to act solely in the interests of participants and beneficiaries under ERISA require trustees who are also officers and agents of the corporation to act with caution in areas of potential conflict in interest. I have acted with caution, and I have taken at all times, when I was in control or Plan administrator, or had the right to terminate the Plan, I operated the Plan in the interest of the participants and no one can say that I have violated my fiduciary duties, and as long as I did not violate my fiduciary duties, I could not terminate the Plan for my benefit. The position is also

supported by the Second Circuit which ruled in 1982 in Donovan that officers of the corporation who are trustees of the pension plan did not violate their duties as trustees. As long as I acted as a fiduciary and for the benefit of the beneficiaries, I could not terminate the Plan. That's the situation. These are circuit court decisions to support that position. But I have done nothing wrong and even through I was an officer of the company and had the right to do it, I didn't do it. I, if I had gone and done it, then they would have an argument, but I didn't. The Plan was administered for the benefit of the participants the whole time right on up until I lost control, and I also pushed for the benefit of the participants up until your ruling of February, 1987.

THE COURT: All right.

[Transcript, Page 35]

MR. AGEE: Your Honor, if I could just make a few concluding remarks.

THE COURT: All right.

MR. AGEE: With respect to the McLean case, I think that the brief that I've offered the Court does come in all the Circuit Court of Appeals' cases unless they've come out last week, deal with this particular issue, all of the Circuit Courts of Appeal, and I think there are four of them, the Fifth, Eleventh, Ninth, and Eighth were very clear in allowing the trustee to get to the pension plan asset. The McLean case is very distinguishable as a Fourth Circuit Court case. It did not interpret Virginia law; it interpreted Illinois law. McLean was similarly situated to all the participants in the Coleman Plan except Mr. Shumate, because no other participant in the Coleman plan had

any control of the Plan, and none of them had a remote percentage of interest similar to what Mr. Shumate has. So, the argument that the trustee makes here is totally different than the situation that existed in the McLean case because Mr. McLean was just a truck driver of many thousands of truck drivers in the Teamster's pension fund, which was the fund in issue in that particular case.

Today is the first day that Mr. Shumate has offered up any evidence or ever mentioned a loan document which was offered in evidence today. Whether or not there was a legal agreement between Coleman Furniture and a lending institution [Transcript, Page 36] with respect to any particular actions of the corporation, it doesn't change the fact of the power that existed to terminate the Pension Plan at will, whether or not that might have

violated an agreement of any funds that came out of the Plan that were owed, that were corporate assets I don't think is relevant here. The loan would have been paid off one of these days. Perhaps other assets of the corporation would have been used to pay the loan.

The fiduciary duty argument is one that's placed here. There's no contention that there was a violation of the fiduciary duty. It's solely an argument of who had control and what would have happened if that power had been used. There's not necessity or argument that anything wrong was done. That's just placed in this context. The fact that there was a Chapter 11 filed by Coleman Furniture, and subsequently a bankruptcy filed by Mr. Shumate, doesn't make any difference either because as all the circuit court cases have said, you -interpret the phrase in

541(c)(2), applicable nonbankruptcy law to mean the law of that state. Obviously, the Bankruptcy Code is going to have precedence over what state law says, so to read any reasonable meaning into what legislative history says, and what Circuit Court of Appeals say, you have to look at the state law and whether or not the spendthrift law of that state is going to permit a particular debtor to place assets, have control of assets that are in a pension plan and [Transcript, Page 37] exclude those from his creditors. That's all I have, Your Honor.

THE COURT: Okay, are you through, Mr. Shumate?

MR. SHUMATE: I'd like to point out when the Plan was terminated, my position in the plan was the same as McLean's in the trucking plan. I was a participant. I had no control whatsoever over the Plan and I

did not have control over the Plan for years before it was terminated. And I believe that I'd have to be held in the same position as McLean as I was a participant in the Plan, and I had no control over it whatsoever. I had become a participant in the Plan, invested in the Plan by my, by my lengthy service in the company. I'd also like to point out I submitted to you some cases which McLean has since ruled that ERISA, if you were an individual --

THE COURT: Well, I may not have that citation in that McLean case. Would you give it to me?

MR. SHUMATE: Yes. It's in my, on page 3, 762 F.2 1204, Fourth Circuit 1984.

THE COURT: All right.

MR. SHUMATE: That would be -- I gave citations to all these cases which I mentioned in this, in my -- and all the

cases which I've --

THE COURT: The McLean case, isn't, is discussed in the original brief filed by the trustee?

[Transcript, Page 38]

MR. AGEE: Yes, I discussed it.

MR. SHUMATE: But I disagree with his interpretation of the McLean case.

THE COURT: All right. I understand. Okay. All right. We'll adjourn court.

(Certificate Omitted in Printing)

[Transcript, Page 39]

INDEX

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WITNESSES FOR THE DEFENDANTS

Joseph B.
Shumate 8

EXHIBITS: Marked Received

Defendants'
No. 1, 2, 3 3 3

Defendants'
No. 4 4

Defendants'
No. 5 5 8

Defendants'
No. 6 5 8

Defendants'
No. 7 13

Defendants'
No. 8 13 15

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

ROY V. CREASY, TRUSTEE	)	FILED
IN BANKRUPTCY FOR	)	AUG 15 88
COLEMAN FURNITURE	)	Joyce F. Witt,
CORPORATION	)	Clerk
	)	By /s/ R. Collins
Plaintiff	)	Deputy Clerk
)	
	)	CIVIL ACTION NO.
v.	)	86-0272-R
)	
	)	MOTION FOR AN
	)	ORDER OF
COLEMAN FURNITURE	)	DISBURSEMENT AND
CORPORATION	)	FINAL ORDER
)	
Defendant)	

COMES NOW, John R. Patterson, Trustee in Bankruptcy for Joseph B. Shumate, Jr. (hereinafter "Patterson") and moves the Court for a Final Order in this cause and in support thereof represents unto the Court as follows:

1. That a Motion to Compel payment of Joseph B. Shumate, Jr.'s, (hereinafter "Shumate") interest in the Coleman Furniture Corporation Pension Plan

(hereinafter the "CFC Plan") to Shumate individually was filed July 27, 1987.

2. That by Order dated August 24, 1987, Patterson was permitted to intervene in this Civil Action and assert a claim as Shumate's Trustee to Shumate's interest in the CFC Plan.

3. That Patterson, Shumate and Roy V. Creasy, Plan Administrator of the CFC Plan (hereinafter "Creasy as Plan Administrator") and Roy V. Creasy as Trustee in bankruptcy for CFC (hereinafter "Creasy as Trustee") entered into an Agreement dated November 12, 1987, settling all issues between the parties concerning the amount at issue (among other things) except the question of whether Shumate or Patterson was entitled to such funds.

4. That this Court entered an Order dated December 4, 1987, incorporating the November 12, 1987, agreement by reference

and approving its terms; which Order also directed the settlement amount of \$250,000.00 to be deposited with the Clerk's Registry Fund pending further Order of this Court.

5. That the Clerk of this Court is holding said funds pending direction by the Court for disbursement.

6. That, after trial on the merits, the Court did enter an Order (with Memorandum Opinion attached) dated February 29, 1988, denying Shumate's Motion to Compel and finding Shumate's interest in the CFC plan was non-exempt, non-excludable property of Shumate's bankruptcy estate and payable to Patterson as Trustee.

7. That Shumate filed a Motion to Reconsider the Court's February 29, 1988, Order.

8. That the Court granted that Motion, but held by Order of April 13, 1988

(with Memorandum Opinion attached) that there was no basis to alter the Order dated February 29, 1988, and affirmed that Order including a reference to 28 U.S.C. §1292(b).

9. That Shumate filed a Petition for Permission to Appeal the April 13, 1988, Order with the United States Court of Appeals for the Fourth Circuit.

10. That the Petition was denied by Order of the Fourth Circuit Court of Appeals dated May 31, 1988.

11. That Shumate then filed a Petition for Rehearing with the United States Court of Appeals for the Fourth Circuit.

12. That the Petition for Rehearing was denied by Order of the United States Court of Appeals for the Fourth Circuit dated June 23, 1988.

13. That Shumate then filed a Motion for a New Trial with this Court dated June

29, 1988, to which an Answer was filed, but no formal Order has been entered by the Court disposing of it.

14. That Adversary Proceeding #7-87-0133 was filed by Patterson in the United States Bankruptcy Court for the Western District of Virginia for turnover of Shumate's interest in the CFC Plan by Creasy as Plan Administrator prior to Shumate's Motion to Compel.

15. That Patterson requested this Court to withdraw the reference to Adversary Proceeding #7-87-0133 pursuant to 28 U.S.C. §157(d) by Motion dated August 12, 1987, and consolidate it with this civil action as the questions of law and fact were identical.

16. That by Order of United States Bankruptcy Judge Ross W. Krumm dated January 8, 1988, all action in Adversary Proceeding 7-87-0133 is stayed until

further order of this Court.

17. That all issues involving Shumate's interest in the CVC plan have been adjudicated by this Court so that Shumate and Patterson should be dismissed as parties hereto.

18. That Patterson, as Trustee on behalf of the Shumate bankruptcy estate, is entitled to payment of the funds on deposit with the Clerk's Registry Fund pursuant to the Court's finding in its Order dated February 13, 1988.

19. That Shumate, Patterson, Creasy as Plan Administrator, and Creasy as Trustee desire that the issue decided by the Court's Orders of February 29, 1988, and April 13, 1988, be resolved with finality by the appropriate Appellate Court at the earliest possible date.

THEREFORE

Patterson moves the Court to enter a

FINAL ORDER encompassing the following:

I. Directing the Clerk of this Court to pay over to Patterson the funds held in the Clerk's Registry Fund representing Shumate's CFC Plan interest.

II. Withdrawing the Reference to Adversary Proceeding 7-87-0133, and consolidating the same with this Civil Action.

III. Dismissing Shumate and Patterson as parties to this civil action.

IV. Establishing the Order as Final regarding Shumate's interest in the CFC Plan and Final regarding any claims between Shumate and Patterson against Creasy as CFC Plan Administrator and CFC Trustee insofar as Shumate's interest in the CFC Plan is concerned.

V. Dismissing Shumate's Motion for a New Trial.

RESPECTFULLY SUBMITTED,

JOHN R. PATTERSON, TRUSTEE
By /s/ G. Steven Agee
G. Steven Agee
of Counsel

G. Steven Agee, Esquire
Osterhoudt, Ferguson, Natt,
Aheron & Agee, P.C.
1919 Electric Road, SW
Roanoke, Virginia 24018

(Certificate of Mailing Omitted in
Printing)

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

ROY V. CREASY, TRUSTEE IN BANKRUPTCY FOR COLEMAN FURNITURE CORPORATION	) Clerk's Office) U.S. Dist. Court) At Roanoke, VA) FILED) SEPT 02 88) Joyce F. Witt,) Clerk) By /s/R. Collins) Deputy Clerk)) CIVIL ACTION NO.) 86-0270-R)) FINAL ORDER) COB #125, p. 127))
Plaintiff	
vs.	
COLEMAN FURNITURE CORPORATION	
Defendant	

THIS DAY came the parties, John R. Patterson, Trustee in Bankruptcy for Joseph B. Shumate, Jr., by counsel, Roy V. Creasy as Plan Administrator of the Coleman Furniture Corporation Pension Plan and as Trustee in Bankruptcy for Coleman Furniture Corporation, by counsel, and Joseph B. Shumate, Jr., pro se, pursuant to a motion

filed by John R. Patterson for an Order of Disbursement and Final Order.

Upon consideration of the Motion, the arguments of counsel and for good cause shown, the Court finds that:

1. All matters involving Shumate's interest in the Coleman Furniture Corporation Pension Plan have been adjudicated by this Court in its orders of December 4, 1987, February 29, 1988, and April 13, 1988.

2. That Shumate and Patterson have no other interest in this matter and that those Orders are final with regard to them and with regard to any other claim regarding Shumate's interest in the Coleman Furniture Corporation Pension Plan, as regards Roy Creasy as Plan Administrator and as Trustee in bankruptcy of Coleman Furniture Corporation.

3. That Adversary Proceeding No. 7-

87-0133 in the United States Bankruptcy Court for the Western District of Virginia, covers identical questions of law and fact as determined by the Court's Orders in this matter and that it is appropriate to withdraw the reference to said Adversary Proceeding and consolidate it with this civil action.

4. That all events have occurred which now entitle Patterson as Trustee of Shumate's bankruptcy estate to be paid the funds held in the Court's registry fund representing Shumate's interest in the Coleman Furniture Corporation Pension Plan.

Therefore, it is hereby

ORDERED

1. That the Clerk of this Court pay over from the Court's registry fund those funds with accrued interest deposited therewith pursuant to this Court's Order of December 4, 1987, and representing the

proceeds of Shumate's interest in the Coleman Furniture Corporation Pension Plan in the initial principal amount of \$250,000.00 plus interest accrued thereon;

2. It is further ORDERED that the reference to Adversary Proceeding No. 7-87-0133 in the United States Bankruptcy Court for the Western District of Virginia is hereby withdrawn pursuant to 28 USC § 157 and such Adversary Proceeding consolidated into this Civil Action;

3. And it is further ORDERED that Shumate and Patterson are hereby dismissed as parties to this Civil Action.

4. And it is further ORDERED that Shumate's Motion for a New Trial be hereby dismissed with prejudice;

5. AND IT IS ALSO ORDERED that this ORDER is FINAL regarding Shumate's interest in the Coleman Furniture Corporation Pension Plan and regarding any and all

claims by Shumate and/or Patterson against Creasy as Coleman Furniture Corporation Plan Administrator and Coleman Furniture Corporation Trustee in Bankruptcy insofar as such claims would relate to Shumate's interest in the Coleman Furniture Corporation Pension Plan.

The Clerk of this Court shall send certified copies of this Order to counsel of record, the Clerk of the United States Bankruptcy Court for the Western District of Virginia, John R. Patterson, Trustee, Roy V. Creasy, Plan Administrator and Trustee, and to Joseph B. Shumate, Jr.

ENTER THIS 1 DAY OF September, 1988.

/s/ Glen M. Williams
JUDGE

SEEN AND AGREED TO:

John R. Patterson, Trustee

By /s/ G. Steven Agee
G. Steven Agee
Of Counsel

Roy V. Creasy, Plan Administrator
and Trustee in Bankruptcy

BY /s/ Harry S. Rhodes
Harry Rhodes
Of Counsel

SEEN AND OBJECTED TO:

/s/ Joseph B. Shumate, Jr.
Joseph B. Shumate, Jr., pro se

p15.ag3.p

Docketed as: SHUMATE'S EXHIBIT from
9-1-88 hearing

September 8, 1988

Ms. Joyce F. Witt, Clerk
United States District Court
for the Western District of Virginia
210 Franklin Road, SW
Room 273, Poff Federal Building
Roanoke, Virginia 24011

RE: Roy V. Creasy, Trustee in
Bankruptcy for Coleman Furniture
Corporation, Plaintiff vs.
Coleman Furniture Corporation,
Defendant
Civil Action Number: 86-0272-R

Dear Ms. Witt:

Attached please find Shumate Exhibit
1, which was presented in a hearing before
Judge Williams in Abingdon, Virginia on
September 1, 1988, of which Judge Williams
has directed that this Exhibit be placed in
the record.

Thanking you for processing this, I am

Yours very truly,

/s/ Joseph B. Shumate, Jr.
Joseph B. Shumate, Jr.
PO Box 2092
Pulaski, Virginia 24301

(703 980-5030

Encls.

AFFIDAVIT

This day personally appeared before me, Roland B. [(sic) /s/D. /s/ RDG] Gunn, who after being duly sworn, said:

1. I am a resident of Locust Street, Dublin, Virginia.

2. I was employed by Coleman Furniture Corporation of Pulaski, Virginia in administration from 1946 until my retirement in June of 1982.

My Title at retirement was Vice President of Administration and Corporate Secretary.

3. I was an active member of the Coleman Furniture Corporation Pension Plan Committee from 1964 until July of 1983 and participated during this period in the administration of the Coleman Pension Plan.

4. Joseph B. Shumate, Jr. elected to retire from Coleman Furniture after Bert Eley, a court-appointed Trustee, terminated

Shumate in February of 1983.

5. I prepared the papers for Shumate's retirement, effective March 1, 1983 and directed Wachovia Bank and Trust Company, a co-Trustee of the Coleman Pension Plan, to start making monthly pension payments to Shumate, beginning March 1, 1983.

/s/ Roland D. Gunn
Roland B. Gunn
/s/ D. /s/ RDG

State of Virginia

CITY/COUNTY OF Pulaski, to-wit:

Subscribed and sworn to before me by
ROLAND B. [(sic) /s/ D. /s/ RDG] GUNN this
23rd day of August, 1988.

My Commission Expires: July 1, 1989

/s/ Beverly Ann Terry
NOTARY PUBLIC

Clerk's Office
U. S. Dist. Court
At Roanoke

FILED

SEP 08 88

Joyce F. Witt, Clerk

By /s/ S. Ayers

Deputy Clerk

THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

ROY V. CREASY, TRUSTEE IN BANKRUPTCY
FOR COLEMAN FURNITURE CORPORATION,

Plaintiff

vs.

CIVIL ACTION NO.
86-0272-R

COLEMAN FURNITURE CORPORATION,

Defendant

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that Joseph B. Shumate, Jr., Appellant, in the above captioned appeal from the District Court, hereby appeals to the United States Court of Appeals for the Fourth Circuit from the Final Order entered in this matter on September 2, 1988.

/s/ Joseph B. Shumate
JOSEPH B. SHUMATE, JR.
PO Box 2092
Pulaski, Virginia 24301
(703) 980-5030

C E R T I F I C A T E

This is to certify that the attached copy of the Coleman Furniture Corporation Pension Plan as amended and restated December 1, 1976, and including all amendments through the eighth amendment, dated May 13, 1980, is a true and complete copy of the original document.

/S/ Roy V. Creasy
Roy V. Creasy (date)
Plan Administrator

STATE OF VIRGINIA)
) to-wit:
CITY OF ROANOKE)

The foregoing Certificate was subscribed and acknowledged before me this /S/ 24th day of /S/November, 1987, by Roy V. Creasy.

/S/Zella M. Field
Notary Public

My commission expires:

/s/April 16, 1991